

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

BULLETIN 2173

January 30, 1975

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - MEISSE, INC. v. NORTH BERGEN.
2. APPELLATE DECISIONS - J. J. SULLIVAN, INC. v. RED BANK.
3. APPELLATE DECISIONS - ALICE G. TOWNSEND, INC. v. ORANGE.
4. DISCIPLINARY PROCEEDINGS (Newark) - SALE TO A MINOR - LICENSE
SUSPENDED FOR 20 DAYS.

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

BULLETIN 2173

January 30, 1975

1. APPELLATE DECISIONS - MEISSE, INC. v. NORTH BERGEN.

Meisse, Inc. t/a Meisse's)
Tavern,)

Appellant,)

v.)

Municipal Board of Alcoholic)
Beverage Control of the)
Township of North Bergen,)

Respondent.)

On Appeal

CONCLUSIONS
AND
ORDER

-----)
Surdovel & Scheurer, Esqs., by William D. Surdovel, Esq. Attorneys
for Appellant

De Bona, Goldberg & Johnson, Esqs., by Joseph H. Ryglicki, Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen (hereinafter Board) which, on June 27, 1974 denied renewal of appellant's plenary retail consumption license for the 1974-1975 licensing period. Further, appellant contends, in a statement attached to its petition that the Board failed to act upon an application for a person-to-person and place-to-place transfer of its license. The Board denied these contentions defending that its actions were reasonable and in compliance with law.

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

Counsel stipulated the admission into evidence of the resolution of the Board, and further stipulated to a statement of the pertinent facts relating to the license, the application for its transfer and renewal. Such uncontroverted facts may be crystallized as follows:

For many years, appellant operated its tavern without violation at 8421 Bergenline Avenue in North Bergen. During recent years, its occupancy was not protected by a lease, and, in the latter part of 1973 its principal officer learned that its tenancy would be terminated about the first of the coming year. In consequence

of this information, and for additional reasons revolving about the mature age of the corporate stockholders, it was decided to accept an offer from a corporate known as Gaudio Foods, Inc. which had a situs nearby on the same street to which a transfer could be made.

Thus an application for a person-to-person and a place-to-place transfer from Meisse, Inc. to Gaudio Foods, Inc. and for premises 8421 Bergenline Avenue to 8531 Bergenline Avenue was filed with the municipality. At that time, there was no Municipal Board of Alcoholic Beverage Control for that Township in existence but the creation of such was imminent. No action was taken on the application at that time.

In March, 1974 the Board was created and began to function. It reviewed the applications for transfer then pending and determined, without hearing, that certain physical improvements in the proposed premises would be required and a plan or sketch of such proposals would have to be submitted. The proposed transferee was advised of the Board's requirements, but appellant was not. By this time, the appellant, having lost possession of its premises, moved the equipment to the proposed location and to the control of the prospective transferee. The license in consequence was not then used.

Application for renewal was made by appellant and, on June 27, 1974 the Board took action as revealed by a portion of its minutes for that date as follows:

"3rd Order of Business:

Renewal of License #C-13, Meisse, Inc. There being no place to conduct business, renewal was denied.

3 No votes."

On July 19, 1974, counsel for appellant wrote to the Board requesting information respecting its action on the application for transfer and was informed that no action was taken on that application as its application for renewal had been denied.

The crucial issue on this appeal is whether the record substantiated the Board's action in refusing to renew appellant's license. The burden of proof in all cases which involve discretionary matters, where the renewal of a license is sought, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super 277 (1957).

Appellant admits that he acted precipitously, in moving the equipment contained in the licensed premises, but contends that such removal was the result of his landlord's action, not his. He declares that he was lulled into the belief that the transfer of his license would be pro forma, and was dismayed by the Board's action in denying renewal. The action of denial of renewal by the

Board was taken on the belief that such license could not issue unless there were premises to be assigned to it.

A license may issue when the premises are closed and not in operation where the Board finds the license use has not been abandoned but the closure is the result of circumstances beyond the control of the licensee. Cf. J & K Bar, Inc. v. Wallington, Bulletin 2146 Item 3; Sanders v. Asbury Park, Bulletin 2130 Item 2; T.V. Motel, Inc. v. East Windsor, Bulletin 2125 Item 1. A license may be renewed despite the applicants inability to find situs for it so long as his efforts to do so are in good faith. Plotkin, Rcr. v. West Orange, Bulletin 2123 Item 4. In such instances, the Board has been ordered to renew but not deliver such license until suitable accommodations for the license may be found.

In the instant matter, the action of the Board was manifestly unreasonable and arbitrary. A licensee of long standing, with a good reputation, is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1956).

I find that the appellant has sustained its burden imposed upon it under Rule 6 of State Regulation No. 15 in establishing, that the Board exercised its discretionary power erroneously.

It is therefore recommended that the action of the Board be reversed; and that the Board be directed to renew the license in order to permit effectuation of the person-to-person and place-to-place transfer of the subject license to the prospective transferee at the new location. It is further recommended, however, the license shall be retained by the Board and not actually delivered to the prospective transferee until such transfer application shall have been approved by the Board.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by respondent within the time limited by Rule 14 of State Regulation No. 15. No answering argument to the exceptions were filed by appellant.

The respondent contends that the report recommends that the Board be directed to renew appellants's license to permit a transfer to the prospective transferee, and by such recommendation the Board would be denied the statutory exercise of its own discretion in acting upon such proposed application for a place-to-place and person-to-person transfer. I disagree with that construction of the Hearer's recommendation.

From a review of the report, it is readily apparent that no such constraints were placed upon the Board. The Board has

mis-read the report which clearly indicates that the recommendation consists of a directive to the Board to renew the subject license "in order to permit effectuation of the person-to-person and place-to-place transfer of the subject license". The Board will, of course, approve such transfer to a suitable person and to suitable premises. The directive to renew merely continues the existing license.

I have fully analyzed and evaluated the other exceptions and find that they are devoid of merit.

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

Accordingly, it is, on this 26th day of November, 1974,

ORDERED that the action of the respondent, Municipal Board of Alcoholic Beverage Control of the Township of North Bergen be and the same is hereby reversed; and that the respondent be and is hereby directed to renew appellant's plenary retail consumption license for the current licensing year, 1974-75, subject to the special condition that the subject license, upon renewal thereof, shall not be actually delivered until the effectuation of a person-to-person and place-to-place transfer of the said license to a transferee and to premises suitable to the Board, in the exercise of its discretion, within sixty days from the date of this Order or such extensions as may be thereafter granted by the Board.

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - J. J. SULLIVAN, INC. v. RED BANK.

J.J. Sullivan, Inc.)
 t/a Shamrock Bar & Liquor Store,)
)
 Appellant,)
 v.)

Mayor and Council of the)
 Borough of Red Bank,)
)
 Respondent.)
 - - - - -)

On Appeal

CONCLUSIONS
and
ORDER

Kantor & Mandi, Esqs., by Robert J. Kantor, Esq., Attorneys for
 Appellant
 Reusille, Cornwell, Mausner & Carontenuto, Esqs., by Martin M. Barger,
 Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent, Mayor and Council of the Borough of Red Bank (hereinafter Council) which, on August 19, 1974, adopted a resolution suspending the plenary retail consumption license C-21 of appellant for premises 172-172A Monmouth Street, Red Bank, for ten days resulting from a finding that appellant on May 31, 1974, sold alcoholic beverages to a minor.

The effective date of the aforesaid suspension was stayed by the Director on August 26, 1974, pending this appeal.

The appellant, in its petition of appeal, contended that the action of the Council was erroneous in that the hearing by the Council was held without affording to the appellant the opportunity to be represented by counsel. The Council denied this contention.

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

The Council introduced the testimony of Detective Raymond G. Patterson of the Red Bank Police Department. He asserted that on May 31, 1974, about 10:30 p.m., he was operating an unmarked police car and was parked directly in front of appellant's premises. He observed a male exiting the premises carrying a brown paper bag. Suspicious of the male's age, he followed the car into which the male had entered, and within a few hundred yards, brought the vehicle to a stop. He observed the brown paper bag lying on the front seat of the

car and could see that beer cans were protruding from its top. He questioned both the driver and the passenger and learned that they were both seventeen years of age.

The male who had made a purchase was identified as Ralph J--- who, along with the driver, a minor identified as George W---, were placed under arrest. The minor, Ralph J. readily admitted making the purchase of the two cartons of beer that were found in the motor vehicle. The detective was shown an expired Florida driver's license which did not bear the name of Ralph J. On cross-examination he admitted that he did not return to appellant's premises to confront the bartender with the apparent violation.

The minor, Ralph J. testified that his date of birth was December 4, 1956, and on May 31, 1974 he was seventeen years of age. He recounted the purchase of beer from appellant's premises and denied that he was asked any questions relative to his age or identification. He averred that he had previously made purchases of beer from appellant's premises and on a prior occasion, had produced the fraudulent Florida driver's license.

Ralph's companion, George W. was called to testify and recounted the incident occurring on May 31, 1974 in general and substantial corroboration of that of Ralph.

Appellant's principal corporate stockholder, John J. Sullivan testified that he was not on the premises on the evening of May 31, 1974 because he was ill at home. He denied that his premises sells the size cans of beer alleged to have been purchased by Ralph and further denied that the bag in which the cans were observed was the kind of a bag used in his establishment. He described his bartenders as being in their early forties and weighing about the same as he does.

Virginia F. Sullivan, the remaining stockholder of appellant corporation testified that although she was not present in the establishment on May 31, 1974, she assists in the premises, is familiar with the stock and particularly with the type of paper bags kept behind the bar for off-premises sales. She denied that the bag allegedly containing the cartons of beer came from the establishment.

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

The general rule in these cases is that the finding must be based upon competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. I find that the evidence presented by the Council does establish that the charge was based upon a reasonable certainty as to the probabilities arising from a fair consideration of such evidence.

After carefully considering all of the evidence produced herein, I am satisfied and find as a fact, that the guilt of the licensee has been established by a fair preponderance of the credible evidence, indeed, by clear and convincing evidence.

In its petition of appeal, appellant contended that it had not been afforded a fair hearing before the Council in that it had not had counsel present. While no proof was adduced in support of this contention, and were it true, this de novo appeal was entirely curative. The Council produced sufficient evidence in support of the charge.

The appellant having failed to establish that the Council's action was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15, it is recommended that the action of the Council be affirmed. It is, further, recommended that the stay of suspension pending appeal be vacated by the Director and the suspension of ten days be reimposed.

Conclusions and Order

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

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

Accordingly, it is, on this 2nd day of December 1974,

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

ORDERED that my Order dated August 26, 1974, staying the suspension theretofore imposed by respondent Council pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of Red Bank to J.J. Sullivan, Inc. t/a Shamrock Bar & Liquor Store, for premises 172-172A Monmouth Street, Red Bank, be and the same is hereby suspended for ten days, commencing at 2:00 a.m. on Friday, January 3, 1975 and terminating at 2:00 a.m. on Monday, January 13, 1975.

LEONARD D. RONCO
DIRECTOR

3. APPELLATE DECISIONS - ALICE G. TOWNSEND, INC. v. ORANGE.

Alice G. Townsend, Inc.)
Appellant,)
v.)
Municipal Board of Alcoholic)
Beverage Control of the City)
of Orange,)
Respondent.)

O R D E R

Anthony J. Iuliani, Esq., Attorney for Appellant
Beninati & LaMorte, Esqs., by Frank A. LaMorte, Esq., Attorneys for Respondent

BY THE DIRECTOR:

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Orange (hereinafter Board) which, on July 17, 1974, denied appellant's application for renewal of its Plenary Retail Consumption License C-17 for premises 48-50 North Center Street, Orange, for the 1974-75 license year. The matter came on for hearing pursuant to Rule 6 of State Regulation No. 15, and, further, pursuant to an Order to Show Cause why appellant's license should not be extended for the 1974-75 license period pending the determination of the appeal.

At the aforesaid hearing, counsel for appellant moved for a continuance of the hearing, basing his application upon an averment that the principal officer of the appellant is presently hospitalized and was in such physical condition that he was unable to adequately prepare this appeal. The Board contested the application, firstly, on the ground that the matter had been previously scheduled for hearings on August 21, September 25, November 4, 1974 (culminating to the present, i.e., November 27), all of which had resulted in continuances; secondly, the physical condition of appellant's officer had been cited as reason for the previous adjournments; and, finally, the operation of the licensed premises, during its extension period has not been in the public interest.

Based upon an assumption that a further adjournment would be granted to appellant, the Board renewed a request that further extension of the subject license be denied and the extension granted pursuant to order of July 24, 1974 be vacated.

The Board introduced testimony of Karen Coscarello, Secretary of the Board, who listed three incidents respecting appellant's premises occurring subsequent to the Director's order extending the term of the said license. The first of these occurred on September 30, 1974, when a patron reported to the police that his wallet was missing after his visit to appellant's premises. That matter having been referred to the detective bureau, no disciplinary proceedings were instituted or contemplated to be instituted against appellant. A further incident occurred on November 10, 1974, wherein a patron notified the local police that another patron was seen in the licensed premises carrying a gun. The police investigation which followed revealed that the gun-carrying patron was an off-duty patrolman from the Newark Police Department. No action was taken by the Board respecting this incident.

A final incident was reported to have occurred on November 25, 1974, wherein a female patron had been beaten in the licensed premises by a male patron and appellant's barmaid refused to summon police help or permit the victim to do so. In consequence, the police were called by the injured patron from another location. Because of the recency of that incident, the Board has not, to date, instituted disciplinary proceedings against appellant.

A transcript of the testimony of the hearing before the Board, held on July 3 and July 17, 1974, submitted for the Division file, pursuant to Rule 8 of State Regulation No. 15, reveals some fifteen or twenty incidents which allegedly occurred during the prior licensing year in appellant's premises. While a determination of the force of such incidents as proper basis for denial of renewal of license is not now at issue, those allegations together with the substance of the resolution denying renewal by the Board, coupled with the subsequent incidents related, mitigate against any further extension of the term of the license pending the final determination of this appeal.

It is undeniable that the alleged record of appellant appears to be a poor one, and when coupled with the subsequent incidents, the last of which may be subject to independent disciplinary proceedings, supports the contention of the Board that the premises are presently not managed in the public interest.

Considering the facts and circumstances herein, I approve respondent's motion to vacate my Order extending the term of the said license pending the determination of the appeal.

Accordingly, it is, on this 4th day of December 1974,

ORDERED that the extension of the 1973-74 term of appellant's Plenary Retail Consumption License C-17, for premises 48-50 North Center Street, Orange, pending the determination of the subject appeal granted by my Order of July 24, 1974, be and the same is hereby vacated; and it is further

ORDERED that the hearing on appeal in this matter be and is hereby adjourned from November 27, 1974 to Friday, January 17, 1975, at 9:30 a.m. at the Division Offices, 25 Commerce Drive, Cranford, New Jersey.

LEONARD D. RONCO
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against Cousins Bar & Liquors, Inc., 274 Van Buren Street Newark, N.J., Holder of Plenary Retail Consumption License C-712, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
and
ORDER

Rusignola & Pugliese, Esqs., by Carmen C. Rusignola, Esq., Attorneys for Licensee
David S. Piltzer and Carl A. Wyhopen, Esqs., 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 March 26, 1974, 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 eighteen (18) years, viz., John DeR--- age 16; in violation of Rule 1 of State Regulation No. 20."

In behalf of the Division, Agent C testified that, on March 26, 1974, accompanied by agent G, he took up a post of surveillance in a motor vehicle parked diagonally across the street from the subject licensed premises. These licensed premises are located in a corner building, and the entrance to the tavern part is on the corner. The exterior entrance to the package goods area is to the left of the corner.

At approximately 8:05 p.m., he observed two apparent minors approach the premises. One of them entered through the door leading to the liquor store. At that time, he was not carrying any packages. Agent C immediately crossed the street to the front door of the premises and observed the youth (identified as John DeR...) in front of the counter therein. Assirio Silva, identified as one of the principals of the corporate licensee, was behind the counter. He saw Silva bending over, come up with a brown bottle, place the brown bottle in a brown paper bag, and then place the brown paper bag containing the bottle on the counter in front of John.

John handed Silva something (the witness thought it was money) and left immediately, with the brown paper bag in his possession. John rejoined his companion across the street at the park. Agent C crossed the street, confronted John and identified himself.

John first asserted that he was eighteen years of age, but later admitted he was sixteen years of age. The agent then ascertained that the bag the minor was carrying contained a quart bottle of Budweiser beer. Upon being questioned by the agent, the minor admitted purchasing the beer at the subject licensed premises but he pleaded that he did not want to cause Silva any trouble.

Thereafter, upon confronting Silva in the presence of the minor, Silva denied making the sale to the minor. The minor then changed the original version and stated that he found the beer under a tree in front of the premises.

Agent G testified that she participated in the subject investigation with agent C on March 26, 1974. While at the post of observation diagonally across the street from the subject licensed premises, she observed two youths, one of whom went into the liquor store empty-handed. She was positioned at a location where she could not observe what occurred inside the liquor store.

Agent G saw the youth, whom she identified as John, leave the store carrying a brown paper bag. She observed John cross the street and rejoin his companion. Agent C followed John across the street and questioned him. Agent G did not accompany agent C in his confrontation of John.

Agent C brought John into the liquor store. Agent G entered the barroom. She heard John shouting and using foul language. She, thereupon, summoned the local police and escorted them into the liquor store.

At a later date, agent G personally served John at his residence with a subpoena to testify at the Division hearing scheduled for June 19, 1974. John did not appear in response thereto. The hearing was thereupon continued to a future date.

At the adjourned hearing held on August 8, 1974, the Division proved the identity of and the age of John, through the testimony of John's mother, a snapshot photograph of John brought in by his mother and the identification of the snapshot photograph of John by the agents who had testified previously. It was established that John was born on January 14, 1958, and was sixteen years of age on March 26, 1974, the date alleged in the charge.

In defense of the charge, Assirio Silva testified that, shortly prior to the time that agent C escorted John into the liquor store, he did sell a quart bottle of beer to one youth and a can of beer to another youth, neither of whom was John. He did not see John until he was brought in by the agents. John asserted in the presence of agent C that Silva did not sell him the beer; that he found the beer outside. He denied that he sold the beer to John, and insisted he had never seen John prior to the actual confrontation as hereinabove set forth.

At the request of the licensee, the hearing was continued to September 19, 1974, in order to afford the Division an opportunity to apply to the Superior Court for an order compelling the minor to testify on that date.

On the continued date, testifying in behalf of the licensee, John asserted that prior to March 26, 1974 he had not been acquainted with Silva. He patronized the licensed premises "...once in a while...They have potato chips and stuff in there." The only time he was in the licensed premises on March 26, 1974 was when he was brought in by agent C.

When he was approached by agent C, he [John] was at the park entrance diagonally across the street from the licensed premises. He did have a quart bottle of beer in his possession. John asserted that although he informed agent C that he had found the beer near a tree, he had actually requested a male, a total stranger, to go into the liquor store and purchase the beer for him. Agent C confronted him approximately two minutes after he received the beer. He had given the unknown male a dollar to purchase the beer; he received no change from this male.

Upon confrontation, agent C asked John whether he was eighteen years of age. John replied that he was sixteen. Agent C then took the bag from John and without checking the contents thereof, he led him into the liquor store.

Upon being questioned concerning whether agent C asked John where he got the beer, he replied: "Yes. I think he said -- he didn't ask me where I got the beer. He says, 'You bought this beer over here, didn't you?' I told him, 'No. I found it.' you know because the guy was still in the vicinity where this happened."

John admitted that he did not, at any time, inform the agent that he had someone else purchase the beer for him. He had never seen the individual who purchased the beer for him either prior to, or after the incident.

Concerning the purchase of the beer by the unknown male, the minor testified as follows:

- "Q Did you ever buy liquor like this before?
Sending somebody in.
A Who? Me?
Q Yes. A No. I don't usually drink. I just got a quart of beer because I was thirsty.
I was playing basketball, and I wasn't going to get drunk off a quart of beer.
Q Do you know how much a quart of beer cost?
A I don't know. About 55, 65, I don't know.
- Q You gave him a dollar bill and he got you the beer and you didn't ask him for change?
A No. Why? The guy did me a favor didn't he? I was supposed to be tight with my money?"

I

Certain jurisdictional matters were raised by the attorney for the licensee at the hearing which require resolution prior to making findings and recommendations in this matter.

Licensee first asserts that the Director is without jurisdiction to hear and determine this matter and that jurisdiction lies solely with the municipal issuing authority.

To the contrary, the Alcoholic Beverage Law, invests the Director with the right to institute disciplinary proceedings by N.J.S.A. 33:1-31, which recites:

"Any license, whether issued by the director or any other issuing authority, may be suspended or revoked by the Director, or the other issuing authority may suspend or revoke any license issued by it, for any of the following causes:

(g) Any violation of rules and regulations."

State Regulation No. 16 implements the statute, and relates to such disciplinary proceedings. Thus, this contention is without merit.

Licensee further argues that the Division should not hear this case because the evidence will be presented by agents who are employees of the Division and, therefore, the licensee could not obtain an impartial hearing. This contention is clearly frivolous and lacks merit.

Congress and State legislatures may constitutionally delegate to governmental administrative and supervisory agencies power to adjudicate controversies arising within their particular administrative fields. See In re Larsen, 17 N.J. Super. 564 (App. Div. 1952). In Larsen it was further held that an administrative tribunal's procedure as both prosecutor and judge in controversies arising within its administrative field does not deny constitutional rights.

II

The issue now presented for determination is strictly factual and, therefore, the issue of credibility of witnesses is of paramount importance. 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).

Evidence 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 common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). No testimony need be believed, but rather, so much or so little may be believed as the trier finds reliable. 7 Wigmore Evidence, sec. 2100 (1940).

I have noted that both agents testified that they observed the minor enter the licensed premises empty-handed and exit therefrom with a bag which, it was later ascertained, contained a bottle of beer. I am persuaded that the agents' version of the alleged occurrence was factual and credible. Although the licensee's attorney alleged that the agents had a personal animus against this licensee due to an aborted investigation of its premises several days prior to the date of the subject investigation, a vigorous and intensive cross examination by the attorney for the licensee failed to establish that the agents were improperly motivated in testifying as they did, or, that they had any personal animus against the licensee. It is my view that the evidence relating to the sale to the minor is clear and convincing.

On the other hand, I was totally unimpressed by the testimony of the witnesses for the licensee. I was particularly unimpressed by the testimony of the minor whose appearance at the hearing had to be commanded by court order. On the witness stand, the minor readily admitted having lied to the agents when he asserted to them, upon confrontation, that he had found the beer. His assertion that an unidentified male had purchased the beer for him for which he paid one-dollar can, at least, be described as ludicrous. I disbelieve his account of what actually transpired.

Accordingly, after considering the entire record herein and the various precedents cited, I find that the charge has been sustained by a fair preponderance of the credible evidence. I, therefore, recommend that the licensee be found guilty of the said charge.

The licensee has no prior record of suspension of license. I further recommend that the license be suspended for twenty days.


Conclusions and Order

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

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

Accordingly, it is, on this 4th day of December 1974

ORDERED that Plenary Retail Consumption License C-712, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Cousins Bar & Liquors, Inc., for premises 274 Van Buren Street, Newark be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, January 2, 1975 and terminating at 2:00 a.m. Wednesday, January 22, 1975.


Leonard D. Ronco
Director