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

BULLETIN 2117 September 26, 1973

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - LOB-STEER INN, INC. v. FAIRFIELD.

Lob-Steer Inn, Inc., t/a Lob-Steer Inn, Appellant,	)	
v.	)	On Appeal
Mayor and Council of the Borough of Fairfield (Essex County), Respondent.	)	CONCLUSIONS and ORDER

Appet & Appet, Esqs., by Laurence E. Appet, Esq., Attorneys for Appellant
Hoey & San Filippo, Esqs., by W. Eugene San Filippo, 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 respondent Mayor and Council of the Borough of Fairfield (hereinafter Council) which by resolution adopted February 22, 1973, approved appellant's application for a person-to-person transfer of its plenary retail consumption license from Cary's Charcoal Broil, Inc. (hereinafter Cary's) at 2 Fairfield Road, Fairfield, to appellant upon condition "that the bar be operated as in the past only as a service bar for restaurant patrons."

Appellant contends that the action of the Council was erroneous for the following reasons:

"A. Said restriction which was initiated by resolution of Respondent on April 16, 1968 was not incorporated into subsequent resolution of the issuing authority upon renewal of previous owner's application.

"B. If in the event the restriction was incorporated in subsequent renewals said restriction is arbitrary, unreasonable and capricious and of no force and effect."

The Council in its answer alleges in effect that its action was a valid and proper exercise of its discretionary authority.

It appears from the testimony of Raymond F. Mills (sole stockholder of the corporate appellant) that appellant entered into a contract to purchase the business conducted by Cary's, conditioned upon Council's approval of appellant's application for the person-to-person transfer from Cary's to it, and to the removal of a special condition restricting the use of the bar to a service bar only.

It should be noted that the special condition had originally been imposed upon the subject license by resolution of the Council adopted April 15, 1968 whereby it approved Cary's application for a person-to-person and place-to-place transfer to the subject premises. The Council adopted the resolution limiting the use of the bar to a service bar only at the conclusion of a hearing at which several area residents voiced their objections to the grant of the place-to-place transfer of the liquor license.

Cary's operates as a moderate fast-food operation serving mainly hamburgers, frankfurters and sandwiches, and is extensively used as a truck stop. Mills proposes to spend a considerable sum of money on alterations in order to beautify the interior and exterior of the premises and install a bar seating twelve to fifteen patrons who could be accommodated thereat while waiting for a table. Mills has proposed a broader menu for patrons attuned to more leisurely dining, and he would discourage or eliminate its truck trade image. He planned to erect a buffer fence between the licensed premises and the abutting residential premises.

At the time that Mills negotiated for the purchase of Cary's, he was aware of the 1968 resolution imposing the special service bar condition.

Donald D. Cary (an officer and a stockholder of the licensee-transferor corporation) testified that the Council imposed the service bar condition at the time that the license was transferred to Cary's at its present location because at the hearing held in 1968 to consider the proposed transfer several residents appeared and objected to the transfer. Cary's acquiesced to the imposition of the special condition because it felt that, unless it agreed to the imposition thereof, the application for the transfer would be denied. It was his impression that the Council would some time in the future remove the special condition if Cary's was operated in a reputable and lawful manner.

The Council reacted negatively to the request contained in a letter addressed to it on May 29, 1969 to remove the special condition.

In behalf of the Council Mayor John J. Francavilla, who also served as Mayor at the time that the subject condition

was originally imposed in 1968, testified that the area residents vigorously opposed the transfer of this plenary retail consumption license to the location because they were fearful of nuisances that could be caused by loud, intoxicated or boisterous patrons, particularly late at night, and of the increased traffic hazards that would result from the proposed transfer. When the hearing to consider the transfer was recessed, all parties agreed to the special condition that the bar would be used as a service bar solely. It was his understanding that no promise was made to Cary's that the condition would subsequently be removed. The prior approval of the Division to the imposition of the special condition was not obtained because the licensee agreed to the imposition thereof. The Council denied Cary's subsequent requests to remove the subject condition.

At the Council hearing held to consider the proposed transfer subject to the elimination of the subject condition, neighbors again articulated their opposition to the removal of the special condition. It was the Mayor's opinion that it was to the community's best interest to continue in force the special condition. Finally, the witness maintained that, as Mayor of the Borough, he was in favor of maintaining the condition in the license although commenting from a purely personal viewpoint he did not "see anything wrong" with permitting patrons to sit at the bar.

William J. Freese, who has resided at premises adjoining Cary's for many years, testified he was one of at least ten to fifteen area residents who appeared to object to the transfer of the plenary retail consumption license at the meeting of the Council on April 15, 1968. He felt that the enlargement of this bar would create a traffic hazard and may attract patrons who would commit acts of nuisances outside the premises. The compromise wherein the transfer of the liquor license was granted with the condition that the bar be used as a service bar only met with the approval of the area residents. He and the area residents are opposed to the removal of the subject special condition limiting the use of the bar to a service bar.

No proof was adduced by appellant that the subject special condition was not incorporated in license renewals subsequent to 1968 and I shall therefore consider that that contention is abandoned.

Preliminarily it should be observed that an issuing authority may impose any condition or conditions to the issuance or transfer of any license deemed necessary and proper to accomplish the objects of the Alcoholic Beverage Law. R.S. 33:1-32. Lubliner v. Paterson, 33 N.J. 428, 447 (1960).

The resolution adopted by the Council approving the

person-to-person transfer retaining the service bar condition which was received in evidence in its pertinent part reads as follows:

"WHEREAS, under Resolution #598 adopted April 16, 1968, the transfer was approved in accordance with the request and made subject to the condition that the bar be operated only as a service bar; and

"WHEREAS, the application on behalf of Lob-Steer Inn, Inc. has been made to change the restriction on the license so as to allow alcoholic beverages to be sold and dispensed over and across a stand-up and/or stood bar on the premises; and

"WHEREAS, a letter has been received from Mr. and Mrs. William Freese of 8 Fairfield Road, protesting any change in the condition as set forth in the aforementioned resolution and the same has been concurred in by Mr. and Mrs. Schifelhuber of Maple Place; and

"WHEREAS, the Mayor and Council have taken into consideration that the issuance of a license being a privilege and not a right and that the continued operation under the present conditions would be in fact in the best interest of the Municipality;

"NOW, THEREFORE, BE IT RESOLVED that the application to transfer license #C-10 from Cary's Charcoal Broil, Inc. to Lob-Steer Inn, Inc. at 2 Fairfield Road, be transferred subject to the condition that the bar be operated as in the past only as a service bar for restaurant patrons."

Thus it is apparent that the reasons for the imposition of the special condition are set forth both in the resolution recited above and in the testimony of the witnesses appearing in behalf of the Council at this hearing.

It may be well to point out that no one has a right to the issuance, renewal or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949). The decision as to whether or not a license shall be issued rests within the sound discretion of the municipal issuing authority in the first instance. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco, 59 N.J. Super. 306, 322 (App.Div. 1960), aff'd 33 N.J. 404 (1960), the following general principles were stated:

"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 ***. 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)...."

In the recent case of Lyons Farms Tavern 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 conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

In support of the reversal of the Council's action, appellant urges that the Division follow the ruling in Belmar v. Division of Alcoholic Beverage Control, 50 N.J. Super. 423 (App.Div. 1958). In that case a hotel operator had concessioned the hotel bar to one McCarthy. The bar became a trouble-spot. The hotel operator terminated the concession and a new license was issued to the hotel operator subject to four special conditions, one of which banned the public bar and confined the service of liquor to patrons seated in the hotel dining rooms. The conditions were approved by the Director pursuant to N.J.S.A. 33:1-32 and were included in subsequent renewals. On appeal to the Director from the continuance of the special condition, it was urged that there was no necessity for the continuance of the special condition because the licensed establishment had been conducted in a proper manner and without any complaints. On appeal from the Director's order removing the conditions, it was conceded that the substantial question presented was whether the Director committed an abuse of discretion in overruling the action of the municipal issuing authority.

In affirming the Director's determination, the court held that:

> "In the present case we cannot say that there was a manifestly mistaken exercise of discretion in review by the Director of the Division. The previous trouble at the place was while it was under the operation of the concessionaire. When the owner of the hotel took over the place, there was no trouble. While it is argued that the absence of trouble under the operation of the owner was due to the existence of the special conditions, this is purely speculative, and the Director was entitled to take the view that, prima facie, the previous trouble was more likely to have been associated with the identity of the operator of the premises than with the absence of special conditions. He cannot be deemed unreasonable in finding, in effect, that it was unfair that only one of nine hotels in the borough, and that the largest, should be hampered by these obviously crippling conditions...."

The Belmar case is distinguishable because, whereas in the instant matter, the Council honored the sentiments of the area residents who objected to the introduction of a bar in that locality; in Belmar a bar had been in operation theretofore, and the hotel was the only one of nine

hotels wherein the aforesaid condition was imposed.

It may be well to quote from the Lyons Farms case, supra, at p. 305, wherein the court ruled as follows:

> "We have no doubt that a municipal alcoholic beverage control board may reasonably honor local sentiment against the grant of a new liquor license or a place-to-place transfer of an existing one. Fanwood v. Rocco, supra, clearly expounded that view. In that case the holder of a package store license whose place of business was located on the outskirts of Fanwood, sought a transfer of the license to premises about a mile and a half away in the midst of the borough's only business center. The proposed new location was opposite the railroad station, two doors away from a confectionery store where local teenagers congregated, about a block away from a church and two and a half blocks from a public school. There was strong public sentiment against a package store in this section of the borough...."

And further (at pp. 306, 307):

> "... Service of the public interest in licensing, in transferring of licenses and in controlling this exceptional business requires an attentive and sympathetic attitude toward the sentiments of substantial numbers of persons in the locality, whether they be residents, commercial operators, or representatives of a nearby church, school or hospital. When their views are hostile to a licensee's request for enlargement of his existing business, and the views are reasonably associated with dangers to the public health, safety, morals and general welfare commonly recognized as incidents of the sale and consumption of alcohol, the local regulatory body does not act arbitrarily in honoring them. In fact, in our view, the local board would be remiss in its duty if it failed to give such views serious consideration...
>
> * * * * * * *
>
> "... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

In conclusion I observe that, in matters involving transfers of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, supra. As noted hereinabove, the Director, in these matters, 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 Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); cf. Fanwood v. Rocco, supra; Lyons Farms Tavern v. Newark, supra.

The Council has in my opinion understood its full responsibility

and has acted circumspectly and in the reasonable exercise of its discretion in denying said transfer. Absent improper motivation, not proven herein, the action of the Council, based upon such bona fide use of its lawful discretion, must be affirmed.

Parenthetically, I note that the Council failed to obtain the approval of the Director for the condition imposed by it pursuant to N.J.S.A. 33:1-32. It appears that many municipal issuing authorities have likewise failed in this respect. Municipal issuing authorities should comply with the procedure set forth in the statute. However, such failure is not fatal and, where the conditions imposed are deemed to be reasonable and proper to accomplish the purposes of the Alcoholic Beverage Law, the Director has uniformly approved the conditions nunc pro tunc. I recommend such approval.

Therefore, upon consideration of all of the credible evidence herein, including transcript of the testimony, the exhibits and the argument of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Hence I recommend that an order be entered affirming the action of the Council, approving the aforesaid special condition nunc pro tunc, and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by appellant pursuant to Rule 14 of State Regulation No. 15, and answering argument thereto was filed by the respondent.

I have carefully analyzed the arguments set forth in the exceptions and find that they have either been satisfactorily considered and resolved in the Hearer's report or are lacking in merit. In particular, I find that appellant was well aware of the condition imposed upon operation of the licensed premises, namely, that the bar be operated solely as a service bar for the patrons of the restaurant. I find this condition to be reasonable and proper, and I shall approve the said condition nunc pro tunc. Marchi et als v. Clifton et al, Bulletin 1385, Item 1.

Consequently, having considered the entire record, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions and argument 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 18th day of July 1973,

ORDERED that the special condition limiting the use of the bar solely as a service bar for restaurant patrons, be and the same is hereby approved nunc pro tunc; and it is further

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

ROBERT E. BOWER
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN APPLICATION - FAILURE TO KEEP BOOKS - LICENSE SUSPENDED FOR 110 DAYS.

In the Matter of Disciplinary Proceedings against

Margaret Berencsi
t/a Sports Rest Cocktail Bar
63-65 Roosevelt Avenue
Carteret, N. J.,

Holder of Plenary Retail Consumption License C-40, issued by the Mayor and Council of the Borough of Carteret.)

CONCLUSIONS and ORDER

Kaplan, Feingold and Kaplan, Esqs., by Seymour Feingold, Esq., Attorneys for Licensee
Carl A.Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Charges were leveled against the licensee as follows:

1. In your short form application dated May 13, 1972 and filed with the Mayor and Council of the Borough of Carteret upon which you obtained your current plenary retail consumption license, in answer to Question No. 3 you, after listing Margaret Berencsi as the sole owner, failed to show in answer to Question No. 10 therein a change in facts in your last prior long form application viz., to show a change in answer from "No" to "Yes" to Question No. 29 in said long form application which asks: "Has any individual,partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?_____. If so, state names,addresses and interest of such individuals,partnerships,corporation or associations_____". to show and disclose that Tibor Berencsi and Felix Bethel had such an interest in that they were the real and beneficial owners of the licensed business; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25.

2. In your aforesaid short form application for license you failed to show and disclose in answer to Question No. 10 therein a change in facts in your last prior long form application viz., to show and disclose that you knew and had reason to know that Felix Bethel who, directly and indirectly, had a beneficial interest in your licensed business, would fail to qualify as an individual applicant for reason of the fact that he had been convicted of a crime involving moral turpitude to wit: bookmaking in Middlesex County Court on January 8, 1960; such evasion and suppression of a material fact being in violation of N.J.S.A. 33:1-25 and N.J.S.A. 33:1-26.

3. In your short from application for your current plenary retail license you failed to state in answer to Question No. 10 therein a change in facts in your last prior long form application viz., a change in answer from "No" to "Yes" to Question No. 30 in said long form application which asks: "Has the applicant agreed to permit any person to receive, or agreed to pay to any employee or other person (by way of rent, salary or otherwise), all or any portion or percentage of the gross or net profits or income derived from the business to be conducted under the license applied for?_____. If so, give complete details_____", and to show you had agreed to permit the aforementioned Tibor Berencsi and Felix Bethel to retain a portion or percentage of the profits or income derived from your licensed business, such evasion and suppression of material fact being in violation of NJ.S.A.33:1-25.

4. From on or about January 3, 1972 to date, you knowingly aided and abetted Tibor Berencsi and Felix Bethel to exercise, at various times, contrary to N.J.S.A. 33:1-26 the rights and privileges of your successive plenary retail consumption license; in violation of N.J.S.A. 33:1-52.

5. From on about January 3,1972 to date, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed premises, viz., a record of all monies received, a record of the source of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of Rule 36 of State Regulation No. 20.

At the hearing licensee pleaded guilty to charges 1 and 4 in so far as they relate to Tibor Berencsi, and not guilty in so far as they relate to Felix Bethel. Additionally, licensee pleaded not guilty to charges 2, 3 and 5. Inasmuch as the penalty is the same whether one individual or more than one individual is involved in the violations which are the subject matter of charges 1 and 4, I shall confine myself mainly to a discussion of the evidence adduced in connection with the remaining charges.

In behalf of the Division agent T testified that, pursuant to assignment to investigate the charge of an alleged undisclosed interest in the subject license, he obtained documents from a local bank setting forth that licensee was operating under a trade name as an unincorporated business; that the unincorporated business was owned entirely by Tibor Berencsi (the licensee's husband), and that the individuals authorized to withdraw funds from the checking account were Tibor Berencsi and Felix Bethel. This was received in evidence together with a check and a deposit

slip in the sum of $1,000. The check, dated February 29, 1972, drawn by Clarence Jolly, Jr., payable to the order of Felix Bethel, was endorsed by Bethel and deposited on the same day in the account of Sport's Rest. Cocktail Bar (the trade name used by the licensee).

On April 18, 1972 agent T proceeded to the licensed premises and requested Bethel to produce a daily book to show payouts and disbursements. Bethel stated that he did not have such book but produced several pieces of paper. Upon returning to the licensed premises on April 25, Bethel produced a book and asserted that he commenced using the book setting forth income and disbursements as of April 17.

Upon ascertaining from the licensee and Bethel that a Charles Varga was the accountant for the tavern business, agent T interviewed him. Varga stated that he did not receive any books of account for disbursements or tapes. At the end of the year he would peruse the bank statements and consult with the licensee and her husband in order to prepare the tax forms.

Upon revisiting the licensed premises agent T questioned Bethel concerning the $1,000 check and deposit. Bethel replied that he had borrowed monies from Berencsi; he wasn't certain of the amounts; Berencsi had kept a record of the amounts borrowed; he did not wish to borrow any additional money from Berencsi; Berencsi hired him to manage the licensed premises, and that he used the $1,000 to pay liquor bills incurred in the conduct of the liquor business.

Finally, there was received in evidence a certified copy of a record of the Middlesex County Court which established that Bethel was convicted on a charge of bookmaking on April 8, 1960, and was sentenced to a fine of $250 and probation for a period of two years.

On cross examination agent T testified that, when he interviewed the accountant, all he was shown was an income tax form and a payroll record. He was not shown a ledger detailing the various expenses. Varga informed him that he figured the income tax form by reviewing bank statements and the receipted bills.

Produced as a witness for the licensee, Sumner N. Weener (an attorney-at-law of this State) testified that in March 1972 he was retained by Bethel to reaffirm the validity of an agreement dated February 10, 1972, wherein Tibor Berencsi and the licensee, named as the sellers, agreed as follows:

> "We undersigned understand and agreed on hiring Mr. Felix Bethel to manage the Sports Rest Cocktail Bar and Lounge for $100 week, plus bonus undetermined at this time, depending on improvement of business."

Additionally, the agreement gave Bethel and wife an option to purchase the establishment within two years at a fixed price, and it contained other provisions that are not relevant to an adjudication of the charges herein.

Charles Varga, who had been retained for the past five or six years as the accountant for the liquor business operated by the licensee, testified that he prepared the bi-monthly State Beverage Tax reports for the licensee. He would examine all invoices, paid and unpaid, for the various beverages and other expenses, which were kept in a file cabinet. Payroll records were made available in order to enable him to prepare withholding and social security deductions and income tax returns. Bethel was listed as receiving a salary.

On cross examination Varga asserted that the licensee or Berencsi informed him of the gross receipts each month.

Concerning bonuses paid to Bethel, Varga testified that he understood that he (Bethel) may "have gotten something if the business or profit warranted it." It was tied in with a larger profit.

Felix Bethel testified that in February 1972 he entered into an agreement with the Berencsis to manage the liquor establishment with a two-year option to purchase. The $1,000 he deposited in the licensee's check account represented money he borrowed in order to replace funds of the business that he used to pay for personal debts instead of paying the licensee's creditors.

On cross examination Bethel testified that he was in practically complete charge of the operation of the liquor business, including hiring of employees, the ordering and payment of bills. In January 1973 he commenced recording entries in a book which he kept alongside the cash register wherein he recorded the daily receipts. Prior thereto he did not know that he was required to keep such records, and he did not keep such records.

Bethel's testimony then reflected the following:

"Q What are the payment terms for you as manager? What are your wages?
A My wages would be a hundred dollars a week; if things got better I get more.
Q What do you mean?
A If business picked up or I take care of the business in the right way I would get a bigger percentage.
Q A bigger percentage of what?
A The money.
Q A bigger percentage of what?
A From Mr. and Mrs. Berencsi.
Q Based upon how the business was doing?
A Yes."

The extra money was not paid to Bethel on a regularly scheduled and recurring basis -- "just if things look good to them they would share me up."

Relative to the emoluments to be paid to Bethel, Tibor Berencsi testified that, if Bethel put in more hours or there was more business, he received extra money.

On cross examination the witness asserted that Bethel was paid additional money if he worked more hours; it was not based upon any increase in business. Bethel was never paid more than $10 extra. He was never paid a bonus. He admitted signing the agreement hereinabove set forth.

Margaret Berencsi (the licensee herein) testified that Bethel was not permitted to make any major decisions relative to the operation of the premises and that she operated the premises as the "owner." Bethel's privilege of drawing checks on licensee's checking account was withdrawn after a period of time. She interpreted the term "bonus" as meaning payment for doing work which is not contemplated as part of the managerial duties. Neither she nor her husband could give full attention to the operation of the business; therefore they retained Bethel to act in a managerial capacity.

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

In appraising the factual picture presented in this proceeding, the credibility of witnesses must be weighed. 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

As previously noted, licensee pleaded guilty to charges 1 and 4 in so far as they relate to Tibor Berencsi.

II

Considering charges 2 and 3 together, I find that the written agreement executed between the licensee and her husband on the one side, and Bethel on the other side, which provided for the payment of a bonus, and Bethel's testimony relating thereto, clearly support a finding of guilt and I so recommend. Additionally, concerning charge 2, it is unchallenged that Bethel was convicted of bookmaking (a crime which involves moral

turpitude) and that such failure to disclose the said record of conviction in the license application was violative of the statute quoted in said charge.

III

Referring to charge 5, I note that Rule 36 of State Regulation No. 20 in its pertinent part reads as follows:

> "All licensees shall have and keep a true book or books of account wherein there shall be entered a record of all monies received and a record of the source of all monies received other than in the ordinary course of business and wherein there shall also be entered a record of all monies expended from such receipts and the name of the person receiving such monies and the purpose for which such expenditures were made...."

A review of Bethel's testimony, wherein he candidly admitted that he did not commence keeping a record of all monies received until January 1973 and that theretofore he had no knowledge that he was required to maintain such records, leads to a finding of guilt of this charge and I so recommend.

IV

Licensee has a prior record of suspension of license by the Director for thirty days effective May 17, 1967, for possessing liquor not truly labeled (Re Berencsi, Bulletin 1738, Item 11). The record of dissimilar violation having occurred more than five years ago, I recommend that it be disregarded for penalty purposes.

It is further recommended that the license be suspended on the first four charges involving a criminally disqualified person for ninety days, and on charge 5 for twenty days, or a total of one hundred ten days. However, since the unlawful situation has not been corrected to date, I recommend that the license be suspended for the balance of its term and the term of any renewal thereof, with leave granted to the licensee or any bona fide transferee of the license or any renewal thereof to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than one hundred ten days from the commencement of the suspension herein.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for the licensee, pursuant to Rule 6 of State Regulation No. 16.

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

Licensee, nevertheless, contends, in the said exceptions that the penalty recommended by the Hearer is too severe. The recommended penalty is consonant with established Division precedents and is fully warranted under the facts and circumstances herein.

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

Accordingly, it is, on this 17th day of July 1973,

ORDERED that Plenary Retail Consumption License C-40, issued by the Mayor and Council of the Borough of Carteret to Margaret Berencsi, t/a Sports Rest Cocktail Bar, for premises 63-65 Roosevelt Avenue, Carteret, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1974, effective 2:00 a.m. Wednesday, July 25, 1973, with leave granted to the licensee or any bona fide transferee of the licensee to apply to the Director by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected, but, in no event, sooner than one hundred-ten (110) days from the date of the commencement of the suspension herein.

Robert E. Bower
Director

3. STATE LICENSES - NEW APPLICATION FILED.

American B. D. Company
62 Fifth Avenue
Hawthorne, New Jersey
Application filed September 21, 1973
for an additional warehouse license
for premises Lyon's Park, Route 73,
Berlin Township, New Jersey, operated
under Plenary Wholesale License W-52.

Robert E. Bower
Director