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

BULLETIN 1970 May 6, 1971

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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BULLETIN 1970

1. APPELLATE DECISIONS - SARL, INC. ET AL. v. TOWNSHIP OF HAZLET ET AL.

SARL, INC., ET AL., Appellants,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAZLET, and EMILY KAHLERT VOGELLUS, t/a HIAWATHA LIQUORS AND BAR, Respondents.	)	

Blanda and Blanda, Esqs., by Philip J. Blanda, Jr., Esq., Attorneys for Appellant
Howard A. Roberts, Esq., Attorney for Respondent Township
Angelo R. Bianchi, Esq., Attorney for Respondent, Vogellus

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Hazlet (hereinafter Committee) which granted a place-to-place transfer of a plenary retail consumption license from premises on Highway 35 to premises leased by respondent Vogellus in a shopping center (hereinafter Big Apple) also located on Highway 35, Hazlet.

The substantive portion of the resolution approving the transfer sets forth the basis for its action:

> "(1) The transfer is found to be necessary as a result of the condemnation of the premises by the Department of Transportation, State of New Jersey, and the Township Committee further finds that the applicant will have insufficient premises for the construction of a bar & grill wherein the old premises was located, thereby making a transfer of the license necessary.
>
> (2) The place to which the applicant proposes to transfer the license is within one-half mile of the former location and on the same highway as the previously owned premises.
>
> (3) The Township Committee is of the opinion that the relocation of the license into the shopping center as proposed will keep the license within the same geographical area as the previous location; that is to say, the new location will serve the same customers served at the old site.

(4) There was no evidence presented to the effect that the proposed site would create a hardship upon the other licenses in the area inasmuch as they are all part of the same selling area as when the previous Hiawatha Bar & Grill was in existence.

(5) The applicant proposes to utilize the premises in the same fashion as was previously utilized; that is, a large bar with a facility to sell package goods.

(6) The proposed transfer will keep the balance of liquor license approximately the way it was before the Department of Transportation condemned the former Hiawatha Bar & Grill.

(7) The best interest of the Township will be served by the transfer of this license."

Appellants' petition of appeal alleges that the Committee's action was erroneous and should be reversed for the following stated reasons:

"1. There is no public need nor public necessity for the issuance of a plenary retail consumption license at the site proposed.

2. The needs and requirements of the public in and about the area of the proposed site are more than adequately served by presently existing installations.

3. The placement of the subject license at the proposed site is contrary to the interests of the public and the best interests of the Township will not be served by the transfer to the present site of this license.

4. There has not been shown any change in circumstances or otherwise from December 3, 1968, to the present time, wherein the Township of Hazlet had determined that the site in question did not need or require a plenary retail consumption license and that the placement of a license at said site was not in the best interests of the Township of Hazlet and that there was no public need nor public necessity for the same.

5. The denial of the place to place transfer will not work any hardship, economic or otherwise, upon the Respondent, Emily Kahlert Vogellus, and the finding of said fact by the Township of Hazlet was against the weight of the evidence, contrary to the credible evidence and not in the best interest of the Township.

6. The proposed site will work an economic hardship upon other licenses in the area and the area is already properly served by these other licenses, and that said finding of fact was heretofore made by the Township of Hazlet on December 3, 1968, and from that date to the present no change in circumstances, fact or otherwise was presented to the contrary.

7. The license of Respondent, Emily Kahlert Vogellus, has in the past been used primarily as a consumption license with some sales and package goods

over the counter, and the present application and site transfer will work to de Facto in changing the license to a plenary retail distribution license.

8. The plans and specifications allegedly filed by Respondent, Emily Kahlert Vogellus, are vague, incomplete and indefinite to the extent that they do not meet the provisions of the law."

The Committee in its answer denied the aforesaid allegations and asserted that its action was not unreasonable.

In its answer, Vogellus alleges that the action of the State in condemning the building and a portion of the land created an economic situation which compelled her to apply for the transfer.

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

The following stipulations were agreed upon prior to taking oral testimony: that the application for the place-to-place transfer was procedurally correct; several competitors had sent in letters to the Committee objecting to the transfer prior to the hearing held by it on May 26, 1970; one of the objectors is a competitor (Hazlet Liquor Mart and Bar Corp., a/k/a Genovese) which was on two occasions denied a person-to-person and place-to-place transfer of a plenary retail consumption license, also known herein as the Decker license, from a location in the eastern area to the western area of the Township at the Big Apple Shopping Center, a distance of approximately two and a half miles (the last application having been denied by resolution adopted on February 18, 1969, the Committee's action being affirmed on appeal by this Division. Cf. Hazlet Liquor Mart and Bar v. Hazlet, Bulletin 1874, Item 1); a letter was sent to the Committee by the local Chamber of Commerce of which the licensee was a member endorsing the transfer; and the resolution approving the transfer was adopted by three of the five member committee, with two abstentions.

Margaret C. Smith, assistant Township Clerk, testified that after Genovese, acting in behalf of Hazlet Liquor Mart, was, on two occasions denied an application for a transfer of the former Decker plenary retail consumption license to an area where the Vogellus license is presently located, the Committee did subsequently approve the transfer of that license (Decker) to Tony's Restaurant where it is now principally used as an adjunct to a restaurant operation.

Samuel Poland, general manager of Sarl, Inc., the holder of a plenary retail distribution license located at Highway 35 and Hazlet Avenue (an appellant herein) testified that Tony's Restaurant is across the highway from Sarl's package goods store. Fitzgerald's Green Acres which operates a bar for on-premises consumption and has a package goods section is located approximately fifty yards to the south of Sarl's. Holiday Inn which sells package goods is located approximately one quarter mile south of Sarl's. From one quarter to one-half mile to the north on Poole Avenue near Highway 36, is located Harry's Liquor and Bar, the co-appellant. Hiawatha Bar, operated by respondent Vogellus, was located approximately one-half mile to the north on Highway 35. It is now located approximately one hundred yards across Highway 35. The highway is separated by a divider. Kahlert's, which operates a bar and a package goods department, is located

approximately one quarter of a mile distant from Sarl's. After the first two weeks of the transfer, he noted a decrease in the sales at Sarl's.

On cross examination, the witness conceded that, in its present location at the shopping center, due to the installation of the road divider and the jug handle turn, Hiawatha is now a greater distance by automobile from Sarl's than prior to the transfer.

Subsequent to the time that Hiawatha terminated its business at the old location in June 1968, due to the condemnation of the building by the State Highway Authority, Sarl's income continued to increase. Since the time that Hiawatha commenced operating at its new location Sarl's income decreased. He did not have with him records to support this assertion. He did not object to the transfer of the Decker plenary retail consumption license to Tony's Restaurant because it was primarily for an on-premises consumption business. However, in the case of Hiawatha he felt it would introduce a package outlet to the area.

On re-cross examination, Poland conceded that Tony's Restaurant could become a competitor by selling packaged goods and that the four taverns located on the side of the highway that he was located on, could have been competitors by selling packaged goods.

William F. Bourbeau, Jr., who served on the Township Committee since January 1, 1968, and who voted in favor of the transfer of the Vogellus license to the Big Apple, testified that he served on the Township Committee on December 3, 1968 when it denied the transfer of the Hazlet Liquor Mart (Genovese) license to the Big Apple. He voted in favor of the resolution of denial. The Committee, in its resolution, found as a fact that to allow the transfer of the former Decker (now Hazlet Liquor Mart or Genovese license) to the Big Apple would add an additional license to an area already served by several on-premises and off-premises licensees; it was not necessarily a natural adjunct to the other uses found in a shopping center; that it would work an economic hardship upon other licensees in an area already adequately served; it was not in the best interest of the town due to the need to maintain a geographical distribution of existing licenses; and there was no need for an additional license in the area.

He voted to approve the transfer of the Decker license to Tony's Restaurant because no objections were raised and since is was to be used mainly as an adjunct to carrying on the restaurant business it wouldn't be in competition with the already established licensed premises.

He favored the grant of the transfer in the case sub judice because of the information he gleaned at the public hearing and at the caucus meetings of the Township committeemen.

It was the committeeman's view, after hearing the testimony presented at the public hearing, that Vogellus did not have sufficient land remaining to construct a similar establishment after the road department's condemnation. In arriving at his determination he also considered the applicant's financial ability to construct a similar establishment. He further based his decision "on the fact that the hardships for the applicant far outweighed the hardships that would be incurred on the part of the objectors."

The witness denied that he voted for the resolution as a matter of political expediency.

He attended a meeting of the County Democratic Executive Committee wherein the application for transfer was discussed. No concensus was determined. There was sentiment expressed both in favor of and for denying the application until someone terminated the discussion by expressing the view that it would be unfair to Committeeman Kupfer and him to continue the discussion.

Balestriere discussed the matter with him on another occasion. Opponents of the application also discussed the matter with him.

On cross examination, the witness asserted that assuming Hiawatha's former property on Highway 35 was unencumbered by mortgage and further assuming that the plot which remained after condemnation was large enough to allow for the construction of another tavern, considering the costs of construction, he still would have voted in favor of the transfer to the new location.

His conversation with Balestriere did not impel him to vote as he did. Committeeman Kupfer who was also present when the matter of the transfer was discussed at a meeting of the Democratic Committee abstained from voting on the resolution adopting the transfer. The other two committeemen voting in favor of the transfer were members of the Republican party.

At the Township Committee meeting of June 9, 1970, Committeeman Bourbeau asserted:

> "I would like to preface my vote by giving a few remarks for the benefit of those who did not sit through the testimony. This was no easy decision for me to make in light of the fact that good points were brought out by both sides. The fact that the hardship proven by the applicant outweighed all the other testimony, particularly the taking of the land by the State and the delay in the payment which caused the problem of rebuilding because prices had soared, in light of this fact and the fact that the license is remaining in the same geographical area I will vote yes."

At that meeting, Mrs. Vogellus testified that it would cost her $67,000 to construct a new tavern. This testimony was uncontroverted.

Eugene D. Balestriere, a Democratic Party district leader, testified that he had been acquainted with the respondent, Emily Vogellus, for approximately eight or nine years and that he had frequented her former establishment occasionally. He attended a Democratic Committee meeting several weeks prior to the time that the application for transfer under consideration was to be acted upon by the Township Committee. After the termination of the official meeting, five or six individuals discussed the merits of granting or denying the subject application. Some spoke in favor of the grant, others opposed the grant. He, personally, was in favor of the transfer. Committeeman Bourbeau, who was present at this gathering did not participate in the discussion. The witness asserted that the discussion was of a general nature because "...we have no influence on the committeemen" and "...because they make their own decision." The discussion terminated when it was indicated that the matter shouldn't have been discussed there.

Thereafter, upon meeting Bourbeau occasionally, he would ask him what was happening on various matters in the municipality in general and not specifically directed to the within application. He did not discuss this matter with any other Committeeman.

Committeeman Herbert J. Kupfer testified that he had opposed the Genovese application for transfer to the Big Apple on both occasions that it was considered because it would bring in an additional license to an area that was already served by several licenses. He did not oppose the transfer to Tony's Restaurant because it would primarily serve the on-premises needs of the restaurant patrons, and additionally, no one opposed the transfer.

He abstained from voting on the application sub judice because he felt that the hardship sustained by Mrs. Vogellus in being compelled to close down her business and trying to recapture her former patronage, and the economic hardship resulting to package stores by permitting the transfer were in such balance that he could not determine who would suffer the greater hardship.

On cross examination, the witness testified that he was in attendance with Committeeman Bourbeau when a discussion arose in Balestriere's presence relative to the transfer of the subject license. Some of those present favored the transfer, some opposed the transfer, some had no opinion. No one directed him as to how to vote. He then asserted "Nobody ever tells Mr. Bourbeau or me how to vote."

Bourbeau, Balestriere and Kupfer testified that although Vogellus' business was primarily a bar business, they had observed bottled goods for sale on display.

Committeeman Nicholas Setteducato testified he was never inside of the Vogellus licensed premises at its former location and, therefore, had no knowledge of whether it was primarily a package goods or bar establishment.

After listening to the testimony elicited at the hearing held on June 9, 1970 by the Committee, he was of the opinion that Vogellus was to conduct, at her new premises, an operation similar to that conducted at her former location.

He voted in favor of adopting the resolution for the reasons expressed therein.

He opposed both applications for transfer by Genovese because the proposed transfer was to a completely different area of town which was, at the time, adequately served. He favored the transfer to Tony's Restaurant because it was to be used as a consumption outlet and no one objected to the transfer.

On cross examination, the witness asserted that he did not recall hearing any testimony at the hearing held by the Committee on June 9, 1970 relative to the size of the Vogellus plot remaining after condemnation other than that elicited from Mrs. Vogellus. Assuming that Mrs. Vogellus had sufficient land remaining upon which she could have constructed a building, he still would have voted to approve the transfer.

Emily Kahlert Vogellus, a respondent herein, testified that she had, since 1937, owned the licensed premises; that the State by virtue of condemnation proceedings took a part of the land which she owned and demolished almost the entire building wherein she formerly operated her liquor business; that she was awarded the

sum of $35,000 by the State; after paying the attorney's fees, license fees and taxes each year, she couldn't operate because she did not have sufficient monies with which to construct a new building; she found it necessary to reconvey (due to her straitened financial circumstances) a plot which she had purchased behind the plot she owned facing the highway; she was sixty-three years of age and that building costs had soared beyond her financial capacity to rebuild.

She denied conversing with Balestriere more than two or three times. She did not discuss the matter of the transfer with him, nor did she request anyone to intercede with him in her behalf.

Henrietta Turner, who had been employed as a barmaid by Vogellus at her former location from June 1966, to five days prior to her closing in April 1968, testified that the on-premises consumption sales and the packaged goods sales, were approximately evenly divided. The premises contained a section used solely for the sale of packaged goods.

Jeanne C. McDonough testified that she had patronized the Hiawatha for fifteen years prior to its transfer to the new location and she observed that the premises contained a packaged goods section.

The burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellants, Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Common Council of Borough of Hightstown v. Hedy's Bar, 86 N.J. Super 501 (1965); Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

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

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

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

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

During the course of the hearing, appellants sought to establish that the Committee's action in approving the transfer sub judice was inconsistent with its action taken in denying an application for transfer of another license to the same location eighteen months previous thereto and that the reasons pertaining to the denial should now control. The two situations were reasonably and adequately distinguished. One of the reasons given by the Committee in its denial of the prior applicant was that the transfer was sought from one geographical area to another. In the instant case, the Committee reasonably found that the transfer was to a location within the same geographical area and, therefore, a new outlet was not being introduced therein.

Appellants also attempted to establish that political overtones tainted the Committee's action. It is my considered opinion that there was no substantial evidence to sustain this point. It is noteworthy that two of the three affirmative votes were supplied by Committee members of a political persuasion different from that of the political worker alleged to have exerted political influence.

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

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

The Committee has, in my opinion, understood its full

responsibility and has acted circumspectly and in the reasonable exercise of its discretion in granting the transfer. I do not find the objections of sufficient merit and thus conclude that appellants have failed to sustain the burden of establishing that the action of the Committee was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Committee and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellants pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 10th day of March 1971,

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

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - MAYER v. CLIFTON.

JOSEPH L. MAYER & WILLIAM L. MAYER, t/a MAYER'S, Appellants, v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CLIFTON, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Davies & Davies, Esqs., by John B. Hall, Esq., Attorneys for Appellants
Arthur J. Sullivan, Jr., by G. Dolph Corradino, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent (hereinafter Board) whereby it suspended appellants' plenary retail distribution license for premises 227 Lakeview Avenue, Clifton, for a period of sixty days effective November 21, 1970. Appellants were adjudged guilty in disciplinary proceedings of a charge alleging that on October 14, 1970 they sold and delivered alcoholic beverages to a minor in violation of Rule 1 of State

Regulation No. 20.

Appellants' petition of appeal alleges that the action of respondent was erroneous in that it was arbitrary, capricious, unreasonable and against the weight of the evidence. It is also alleged that the penalty of sixty days was unduly harsh and excessive.

Upon the filing of the appeal an order was entered on November 17, 1970, staying the Board's order of suspension until further order of the Director.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15 and, by stipulation, predicated upon the submission of transcript of the disciplinary proceeding held before the Board on November 12, 1970. Rule 8 of State Regulation No. 15.

At the outset of the hearing, by way of stipulation of counsel the police reports were introduced into evidence. The two minors involved herein (Barry --- and Richard ---) testified only as to their ages, i.e., that they were sixteen and seventeen years old at the time of the alleged occurrence.

The co-licensee Joseph L. Mayer testified in defense that one of the minors (Barry ---) came into his store on March 7, 1970, produced an army ID card in the name of Malcolm Starrd, signed a statement in that name setting forth a date of birth to reflect that he was twenty-six years old. A copy of the statement was introduced into evidence. To the question "Does he appear to be 26 years old to you", the response was "I don't believe I have an opinion."

The wife of the other licensee (Helen Mayer) testified that she was present on March 7, 1970 when the form in evidence was signed by the minor Barry --- as Malcolm Starrd. She admitted that she did not note on the form in evidence anything pertaining to the ID card she alleges she was shown. She admitted asking her brother-in-law and a woman who was present "Do you think we can serve him?"

Josephine Oppermann testified she was in the liquor store on March 7, 1970 and saw Barry proffer an ID card and sign the form. She admitted helping in the said premises "one time" and then selling cigarettes "to one of those fellows."

The Board introduced rebuttal testimony of Barry --- (the minor) who denied ever producing a draft registration card or any other identification. He admitted inventing the name used on the form in evidence, declaring that the address of 43 Highview Drive, Paterson, was non-existent.

Richard --- (the other minor) testified that no identification was ever required in the appellants' store while there with Barry.

A final question was directed to the licensee Joseph L. Mayer: "Prior to the evening on which [Barry] filled out that form, had you ever served him in your store", to which the answer was "But he always showed a card." Upon rephrasing of the question, "The other gentleman was in your store prior to March 7th and he always produced a card", the answer was "Correct."

Counsel for appellants urged that there was no violation of N.J.S.A.33:1-77 in that the minor, possessing the appearance of one over twenty-one, falsely represented his age in writing and the sale was made in good faith. If the statute was not wholly violated, the appellants merely avoid being charged with a misdemeanor. We are dealing with a purely disciplinary action and not criminal action, and such action is civil in nature. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

> "In disciplinary proceedings involving alleged sale of alcoholic beverages to a minor in violation of Rule 1 of State Regulation No. 20, the defense provided by R.S. 33:1-77 is available to the licensee... Such a writing must be signed by the minor in the presence of the licensee... After the writing has been signed, the licensee should require that the person signing the representation adequately identify himself as that person and thus affirmatively avoid the acceptance of these representations from persons using fictitious names, addresses and ages... (underscoring added). State Regulation No. 40, 5. Disciplinary Proceedings.

The above reference is cited in that, by separate memorandum, counsel for appellants strenuously urged that the requisites of the statute, N.J.S.A.33:1-77, providing for defense in the sale to minors has been met. There is no conclusive foundation for this premise. The appearance of the minor was not that of an adult, as indicated by the expression of the members of the Board. The appearance of the minor must be such that an ordinary prudent person would believe him to be of age. (See Special Note, p. 86 of Rules and Regulations relating to defenses provided by R.S. 33:1-77.) The Board found to the contrary.

> "We have no hesitancy in stating that in our opinion to constitute the statutory defense to such a prohibited sale, the accused must establish not some but all of the factual elements enumerated in the enactment relating thereto. This exculpatory requirement the appellant failed to meet by adequately supporting evidence." Sportsman 300 v. Bd. of Com'rs of Town of Nutley, 42 N.J. Super. 488, at p. 493.

The matter under consideration is one of fact and the testimony of the witnesses must be carefully weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App.Div. 1961).

The Board, with the benefit of seeing and hearing the witnesses and being able to determine upon whom to place the greater credible value, was unanimous in evaluating the evidence against the licensee. The transcript of the testimony fails to reveal any elemen of error in that conclusion. The preponderance of the credible evidence leaned heavily agains the licensee.

It is recommended that the appellants be found guilty of the charge preferred and that an order be entered affirming the Board's action and dismissing the appeal.

Finally, appellants allege that the penalty was excessive and should be reduced. In determining the penalty, the ages of the minors is an important element. The suspension imposed in a local disciplinary proceeding rests in the first instance within

the sound discretion of the municipal issuing authority. The power of the Director to reduce the suspension on appeal is confined to cases where the suspension is manifestly unreasonable. Lou's Liquors v. Plainfield, Bulletin 1692, Item 1.

In view of the tender ages of the two minors involved, the suspension imposed as aforementioned does not warrant a basis for modification of penalty imposed. Re Bischoff, Bulletin 53, Item 5. The penalty herein assessed was not unreasonable in view of the ages of the minors and the fact that there had been a prior similar violation committed within six months from the date alleged in said charge resulting in a suspension of ten days by the municipal isssuing authority effective April 27, 1970.

Under the circumstances herein, and after a careful examination of the record, it is recommended that an order be entered affirming respondent's action, dismissing the appeal, and fixing the effective dates for the said sixty-days suspension, which suspension was stayed by the Director pending the entry of the order herein. Sventy and Wilson, Inc. v. Point Pleasant Beach, Bulletin 1930, Item 1.

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. No answer to the said exceptions was filed by respondent.

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

Accordingly, it is, on this 10th day of March 1971,

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

ORDERED that my order dated November 17, 1970, staying respondent's order of suspension pending the determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License D-4, issued by Municipal Board of Alcoholic Beverage Control of the City of Clifton to Joseph L. Mayer & William L. Mayer, t/a Mayer's, for premises 227 Lakeview Avenue, Clifton, be and the same is hereby suspended for sixty (60) days, commencing at 9:00 a.m. Thursday, March 25, 1971, and terminating at 9:00 a.m. Monday, May 24, 1971.

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary Proceedings against	)	
PADDOCK LOUNGE, INC. t/a Paddock Lounge 44-46 Chelsea Avenue Long Branch, N. J.	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-52, issued by the City Council of the City of Long Branch.	)	

Anschelewitz, Barr, Ansell & Bonello, Esqs., by David K. Ansell, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

On July 9, 1970 I entered an order herein suspending the license for the balance of its term effective July 22, 1970, with leave for the licensee or any bona fide transferee of the license to apply by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than twenty days from the commencement of the suspension herein. Re Paddock Lounge, Inc., Bulletin 1929, Item 3.

Prior to the effectuation of the order of suspension, on appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal. The court affirmed the action of the Director on March 4, 1971. Paddock Lounge, Inc. v. McDonough, Director, etc., (App.Div. 1969), not officially reported, recorded in Bulletin 1965, Item 1. The suspension may now be reimposed.

Accordingly, it is, on this 15th day of March 1971,

ORDERED that Plenary Retail Consumption License C-52, issued by the City Council of the City of Long Branch to Paddock Lounge, Inc., t/a Paddock Lounge, for premises 44-46 Chelsea Avenue, Long Branch, be and the same is hereby suspended for the balance of its term expiring June 30, 1971, effective at 3 a.m. Monday, March 29, 1971, with leave for the licensee or any bona fide transferee of the license to apply by verified petition for the lifting of the suspension whenever the unlawful situation has been corrected but in no event sooner than twenty (20) days from the commencement of the suspension herein.

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGE NOT TRULY LABELED - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against RENEE'S BAR and LIQUOR STORE, INC. 534-536 Kaighn Avenue Camden, N. J. Holder of Plenary Retail Consumption License C-168, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Wilinski, Coruzzi & Suski, Esqs., by Robert Wilinski, Esq., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 28, 1970, it possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for sixty days, effective July 23, 1970, for permitting gambling (acceptance of numbers bets) on the licensed premises. Re Renee's Bar and Liquor Store, Inc., Bulletin 1929, Item 2.

The prior record of suspension for dissimilar violation within the past five years considered, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Hilltop, Inc., Bulletin 1864, Item 2.

Accordingly, it is, on this 16th day of March 1971,

ORDERED that Plenary Retail Consumption License C-168, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Renee's Bar and Liquor Store, Inc., for premises 534-536 Kaighn Avenue, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, March 22, 1971, and terminating at 2:00 a.m. Thursday, April 1, 1971.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
JULIUS FEKETE and MARY FEKETE a/k/a Maria Fekete t/a Feketes' New Glass Bar 712 South Broad Street Trenton, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-78, issued by the City Council of the City of Trenton.	)

Licensees, Pro se.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on February 19, 1971, they sold a drink of beer to a minor, age 16, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Nace, Inc., Bulletin 1738, Item 6.

Accordingly, it is, on this 17th day of March 1971,

ORDERED that Plenary Retail Consumption License C-78, issued by the City Council of the City of Trenton to Julius Fekete and Mary Fekete, a/k/a Maria Fekete, t/a Feketes' New Glass Bar, for premises 712 South Broad Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, April 1, 1971, and terminating at 2:00 a.m. Wednesday, April 21, 1971.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
HARBOR CASINO, INC. t/a Harbor Casino 171 Warren Street Jersey City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-416, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	)	

Licensee, by George Chowanec, President, Pro Se.
Edward F. Ambrose, Esq., Appearing for the Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, January 30, 1971, it sold six cans of beer for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Joy-Ken Corp., Bulletin 1940, Item 10.

Accordingly, it is, on this 19th day of March, 1971,

ORDERED that Plenary Retail Consumption License C-416, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Harbor Casino, Inc., t/a Harbor Casino, for premises 171 Warren Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, April 5, 1971, and terminating at 2:00 a.m. Thursday, April 15, 1971.

RICHARD C. McDONOUGH
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

E. L. Kerns Co.
West side of Rt. 206, 1/2 mile north of
Intersection of Amwell Road & Route 206
Hillsborough Township, New Jersey
Application filed May 3, 1971 for place-to-place transfer of State Beverage Distributor's License SBD-13 from 302-304 North Broad Street, Trenton, New Jersey.

Richard C. McDonough
Director