

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

BULLETIN 2108

July 25, 1973

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STATE OF NEW JERSEY  
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2108

July 25, 1973

1. COURT DECISIONS - SANDERSON v. WOODSTOWN - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-2046-71

ALFRED T. SANDERSON  
t/a Newtown Tavern

Plaintiff-Appellant,

v.

BOROUGH COUNCIL OF THE BOROUGH  
OF WOODSTOWN,

DEFENDANT-RESPONDENT.

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Submitted May 7, 1973 - Decided May 30, 1973

Before Judges Leonard, Halpern and Ard.

On appeal from Department of Law and Public Safety,  
Division of Alcoholic Beverage Control.

Mr. Alfred T. Sanderson, attorney for appellant.

Messrs. Acton & Point, attorneys for respondent  
(Mr. Lawrence W. Point, on the brief).

PER CURIAM

(Appeal from the Director's decision in Sanderson  
v. Woodstown, Bulletin 2037, Item 1. Director  
affirmed. Opinion not approved for publication  
by the Court Committee on Opinions.)

2. DISCIPLINARY PROCEEDINGS - LEWDNESS ON LICENSED PREMISES - IMMORAL  
DANCE - CHARGES NOT ESTABLISHED - CHARGES DISMISSED.

In the Matter of Disciplinary )  
Proceedings against )

Pres-Jer, Inc. )  
t/a Carousel Lounge )  
1776 S. Washington Ave. )  
Piscataway Township )  
PO New Market, N.J., )

CONCLUSIONS  
and  
ORDER

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

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Paul H. Greenberg, Esq., Attorney for Licensee  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Thursday, March 23, 1972, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered a female person to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20."

ABC agent C testified that, accompanied by agents Cu and R, he entered the licensed premises on March 23, 1972, at approximately 1:20 p.m. He described the premises as containing, on the left side thereof, a platform raised approximately two feet from the main floor, upon which tables and chairs are located. To the right side, there is located a "question-mark" shaped bar with a large stage located in the center of the "bow" part.

Upon entry, the agents sat at a table on the raised platform. Agent C had a clear view of the stage approximately twenty-five feet distant. The patronage consisted of approximately forty-five males and three or four females.

Later, the agents positioned themselves at the "bow" section of the bar in front of the stage and two feet distant

therefrom. The bar was serviced by a bartender and a barmaid.

Upon entry, a female, identified as Lourdes Ramirez (attired in a two-piece go-go outfit with a G-string type bottom), danced approximately five minutes until she concluded her set. Another female performed for approximately half an hour and upon concluding her set, Ramirez commenced performing again. The agent described Ramirez's performance as follows:

"...at one point she grabbed both her breasts and raised them to her face as to kiss each one. She was observed to lie on her back, with her legs spread apart, raise her pelvic area and with a grinding-type motion as, say, having sexual intercourse, and rubbing her hands on the inside of her thighs. She had done this on the right side of the stage so everybody could see it."

And later: "It was also observed that, during her dance, she would cause her right breast to fall out, exposing her nipple. On the first dance this happened about four times and each time after about a minute, she would replace it."

On two occasions, Ramirez approached the organ, made a grinding motion and said in a loud voice, "Now I am going to be playing with my organ."

On two occasions, Ramirez stepped from the stage onto the bar and placed her buttocks in the face of a patron. On one occasion a patron kissed the female's right cheek.

He observed Ramirez perform two full sets. In comparing the two performances, agent C testified as follows:

"It was basically the same performance, except that her right breast came out six times instead of four as in the first performance, and on the second performance she also massaged her nipple before placing it back in and more or less pulled the cup of her top down so as to expose her breasts completely to the audience.

She basically went around, did the same thing as far as laying on her back, raising her pelvic area with her legs spread, raising her breasts to kiss them, did the same thing, did the same thing with the organ."

Upon completing the second full set the agents identified themselves to the bartender. He referred them to the "owner" and manager who were in the rear kitchen area. Proceeding into the rear kitchen area, they identified themselves and informed them of the occurrence. They could not view the stage from the kitchen area. The agents also interviewed Ramirez. The costume, except

for the pantyhose and the rubber paddings which are inserted into the cups of the brassiere, allegedly worn by the dancer, were received in evidence.

During the course of the inquiry relative to the admissibility of the dancer's costume into evidence, agent C testified that the dancer wore a see-through type pantyhose under the bottom part of her costume which permitted him to observe a shaved pubic area. He did not know whether there were rubber pads in the top part of the dancer's costume at the time of her performance. He did not observe any other mark or distinguishing feature on her body.

On cross examination, agent C testified that he did not change his position from the table to the bar until Ramirez had completed her first full dance set. On the first occasion that she exposed her right nipple, the dancer shook her breast and the nipple "wiggled out". She did not remove it by hand, nor did she remove the top of her costume. The bra portion of her outfit was snug or tight in fit.

The agent denied that either he or the other agents said anything to the dancer until the confrontation in the kitchen.

With reference to the organ incident, agent C testified that the dancer "...more or less she put her leg on here and grinded her crotch area into the side of the organ." The organ was on the stage.

The questioning then revealed the following:

- "Q Now, Mr. C, with regard to your testimony that Miss Ramirez caused her right breast, to fall out four times was your count. A Yes, sir.
- Q On one performance, correct? A Yes.
- Q Six times on another performance? A Yes, sir.
- Q Could you tell us how she accomplished this specifically? A By shaking her breast area.
- Q Again by shaking? The same kind of shaking we spoke about, not taking them out, not removing her top, loosening it or anything? A No, sir.
- Q And you say when it fell out or became exposed, she did what after that happened? A She left it out for approximately a minute and you could see an exposed nipple on her right breast.
- Q And then what happened after a minute. A She would tuck it right back in.
- Q Are you saying that her whole breast came out of

top? A her nipple was exposed; not her whole breast."

Concerning the buttocks incident, agent C testified that Ramirez stepped from the stage a distance of two feet onto the bar. She then "more or less" squatted, facing the stage. A patron positioned three stools distant from agent C reached up and kissed her on her right cheek on his second attempt. The patron wasn't requested to do this; it was apparently his own idea.

He observed the bartender and barmaid glance at the stage occasionally. He did not know whether or not the "owners" were in the room at the time of the performances.

Upon being requested to describe Miss Ramirez's first complete performance, agent Cu who accompanied agent C to the licensed premises relative to the subject charge, testified as follows:

"During the course of her performance I observed her to lay on the floor, raise her buttocks off the floor, rub her hands on the inside of her thighs, rotate her buttocks area and her pubic area. And afterwards, she would stand up, she would manipulate her chest in such a way as to have her right breast expose the nipple fully, at which point during this manipulation she was looking right at it and she was, all the time it was exposed, was looking at it and looking back at the males seated at the bar. She would then take the costume, the upper portion, pull it out, place her hand on her breast and put it back after approximately a minute. She would keep it out approximately a minute. This happened several times on both sets that we observed."

Additionally, he observed the dancer place one leg on the organ and perform bumps and grinds on the side of the organ. He observed the performer "...step from the stage onto bar in front of a male patron and place her buttocks towards his face, looking back at him and smiling, and he was smiling and he went to kiss it and missed. She giggled and stepped back up on the stage."

During the course of this set she exposed her breast six times. On one occasion she placed her finger on her nipple and rubbed her nipple for approximately a minute. She again stepped off the stage "...onto the bar, placed her buttocks towards the same male patron. At this point he leaned over, she's looking at him, and he kissed the right cheek of her buttocks. She giggled again, got back up on the stage."

During the course of both performances, he observed Ramirez expose her breast ten times. On these occasions she would "...place it back by pulling the top of her outfit down, take her hand and place the breast back into the top of the cup."

Cu and the other agents thereafter identified themselves to the licensee's employees.

On cross examination, agent Cu testified that Ramirez's breast became exposed by the manipulation of her chest area. She did not use her hands in unloosening her top or to otherwise expose her nipple. Neither he, nor the other agents directed any comments to Ramirez while she was performing. Some patrons did make comments. She did not dance while on the bar; she placed both feet on the bar, turned around and placed her buttocks in a male patron's face. He did not interview the patron.

Agent Cu stated that, in his written report of activity which he prepared on the day following the events described, he reported therein relative to the baring of the nipple the following "...and with her hands made both straps to the upper portion of her costume fall from her shoulders." He considered the shoulder piece or harness part on the upper part of her tops as straps. The agent then asserted that he now wished to change his testimony to conform with his written report relating that the dancer pulled the straps down from her shoulders with her hands.

Agent Cu described the patron whom he alleged to have kissed Ramirez on her buttocks as "...tall fellow, blonde fellow, big fellow," and "Roughly thirty years of age."

Referring to a male identified as Mr. Malinowski by the attorney for the licensee who was six feet in height, had blonde hair and was twenty-four years of age, agent Cu asserted that he was of the same description involved in the buttocks incidents, and that, although he was not certain, it was possible that it was he.

Agent R's testimony was mainly corroborative of the testimony offered by agents C and Cu with reference to the exposure of Ramirez's nipple on several occasions during each set. The agent also observed the dancer "...removed the straps herself, and after removing the strap, she would go into these gyrating motions with her shoulders, moving back and forth," and "...after she removed the straps, she would lean over facing the crowd and she would move her body, and at one point the nipple came out."

Agent R's testimony was also corroborative concerning the incident of the dancer stepping on the bar and placing her posterior towards the face of a male on two occasions. On the second occasion, the male kissed the dancer's posterior.

On cross examination, agent R testified that he first observed the "brown part" of Ramirez's nipple, later he saw the entire nipple out of the cup when the dancer's shoulder straps were down.

He denied speaking or shouting to the dancer in Spanish or in any other language while she was performing.

Each time that her nipple became exposed, the dancer would push it back into the brassiere with one finger or her whole hand after leaving it out "several seconds".

In order to step on the bar, the dancer first stepped onto some object which he thought was a freezer.

The male who had heretofore been identified in the hearing room as Malinowski may have been the same male who contacted the dancer with a kiss. He did not touch her bare skin, but did touch the pantyhose she was wearing.

The dancer did not perform on the bar; she merely faced away from the audience, bent down and stood up on two occasions and immediately returned to the stage. He did not recall anything interfering with her standing in an upright position. He did not recall whether there was or wasn't a wooden scalloped awning extending from the ceiling over the bar.

In defense of the charge, Stanley L. Malinowski, testified that he has patronized the licensed premises on several occasions. On March 23, while patronizing the licensed premises from 1:30 p.m. to 4:00 p.m. he was seated on the right hand side of the flattened "S"-shaped bar, two seats from the end and within two or three feet distant of the stage.

He observed Ramirez's performances. He saw no differences between her performances and the other "go-go" dancer's performances other than that Ramirez appeared to be more "dedicated" and "professional". At no time did Ramirez expose her breast or the nipple of her breast. Due to the curvature of the stage the first and second seats at the bar are closest to the stage.

At no time, did Ramirez step from the stage onto a "freezer" or any other object and then onto the bar. The object between the bar and the stage was a cooler and not a freezer and it was not an object that could be stepped on. At no time that day, did Ramirez in any manner step onto the bar.

At any time that Ramirez bent over with her back towards the bar, she was on the stage three or four feet distant from him. He denied that he kissed any part of her anatomy or costume. No one in his immediate area planted such a kiss. Ramirez was wearing pantyhose as part of her costume. No part of her pubic or crotch area was exposed.

At no time did Ramirez put one leg on the organ or lean against the organ and make motions of any kind or say anything to the effect that she was "playing" or "laying" on her organ. She never said anything while dancing.



On cross examination, the witness testified that he observed seven-eighths of Ramirez's performances. A canopy hangs over the bar. A person five feet, three inches in height could not stand up straight on the bar. At no time did he reach out for Ramirez.

Anthony S. White, employed as a patrolman by the Edison Police Department, testified that he was off duty on March 23. Accompanied by two other police officers, he patronized the licensed premises on that day from 12:30 p.m. to approximately 3:45 p.m. The officers sat at a table on a platform approximately "17 feet" distant from the stage. While observing Ramirez's performances he never saw her leave the stage in any manner and step onto the bar. She never exposed her breasts or the nipples of her breasts. No part of her costume came off. She was at all times wearing pantyhose during her performances. No part of her pubic area or crotch was ever exposed. At no time did she lie on her back or otherwise and perform movements associated with sexual intercourse. At no time did she put her leg on any part of the organ or climb up or lie on the organ and make grinding movements or bumps at the organ. She did not speak at all while on the stage.

Throughout Ramirez's performances he faced her and watched her perform. He, at no time, left the room. At no time did she remove her straps thus causing her breast to be exposed. At no time did he see her tuck her nipple back into her costume or take either breast in her hand, push it towards her face and kiss it.

The witness added that he had a clear view of the stage and he did not see Ramirez place her buttocks in anyone's face nor anyone kiss her buttocks. At no time during the three hours that he watched the performances did he observe any lewdness, indecency, obscenity or anything improper such as has been testified to herein.

Lourdes Ramirez gave the following account: She is employed as a professional dancer. Prior to March 23, she had performed at the licensed premises every Thursday for a period of eight months.

While performing on March 23, she noted the presence of the three ABC agents who were seated at a table on a raised platform. On that day, she was wearing the costume that was received in evidence. Additionally, she was wearing pantyhose similar to those she was wearing on the day of this hearing (June 15, 1972). The rubber pads, which are inserted in a slit in the brassiere portion of the top part of her dancing costume (received in evidence), were removed by her at the time that her costume was confiscated by the agents so that she could insert the pads in another costume for her to wear, thus enabling her to complete the day. In order to conceal some scars on her body resulting from a fire she never wore sheer pantyhose. The scars were located on both legs, shin bone area, calves, and in her crotch area.

At no time did she step from the stage onto the bar or dance on the bar, nor did she ever crouch down on the bar and place her buttocks near the face of a patron. She observed the presence of the three ABC agents and Malinowski while they were seated at the bar. The closest her body would have been to Malinowski (who was seated closest to her), at any time, would have been three and one-half feet. Malinowski did not kiss her.

She wore pantyhose of a type called "Danskins" not only for the purpose of concealing her scars, but also because she finds them beneficial in maintaining muscle tone. Her crotch or pubic area could not be seen through her costume. She did not shave her pubic area because her stockings are so heavy that no one could see her hair or skin.

On March 23, she wore rubber pads in the top part of her costume and with the padding in, the top fitted in tightly. She could not wiggle any part of her body out of it without using her hands. She could not expose her breasts by manipulating her torso. She could not drop a strap without taking down the entire sleeve portion to which it is attached. She, at no time, exposed her breasts or either nipple.

The lighting in the bar and table area is dim. The stage is lit by red and blue colored bulbs. The stage is not lit by a spotlight or floodlight.

Ramirez denied putting a leg on the organ or performing bumps or grinds or making any other motions with the organ, thus simulating sexual intercourse. Nor did she make any statements to the effect that she was going to "lay" or "play" on the organ or "play with her organ" or say anything to the audience at all. She, at no time, while performing, made motions simulating sexual intercourse. She does not lie down on the floor during her performances. She never kissed her breasts.

During the course of Miss Ramirez's testimony, the licensee's attorney offered to display the scars on Miss Ramirez's body to a matron selected by the Division. The offer was not accepted.

Preston Smith, one of the principal stockholders and a principal officer of the corporate licensee, testified that a wooden canopy hangs down from the ceiling over the bar. It was his opinion that no one over four feet tall could stand on the bar without striking his head against the canopy.

On the date charged herein, he was working in the kitchen. He observed what Ramirez was wearing that day because the performers must pass through the kitchen. She was wearing heavy mesh pantyhose up to her waist, briefs and a shoulder halter with sleeves. He had a full bar that day. Because of the quantity of beverages on the bar, it would be most difficult

to dance thereon. Also, because of the canopy over the bar, it would be impossible to dance thereon. He never saw Ramirez dancing on the bar.

Jerry Duhigg, one of the principal stockholders and the president of the corporate licensee, testified that he was in the office at the time of the occasion complained of. Ramirez always wears the same type clothes while performing. On this occasion, she was wearing the outfit heretofore described. She wears more clothes than any other "go-go" performers that he has seen. During the eight months that she has performed at the licensed premises he has never seen her remove any part of her costume or expose any part of her body. The remainder of his testimony was mainly corroborative of the testimony offered by Smith.

I have particularized in, in considerable detail, the testimony of the witnesses adduced herein in order to present a full and objective picture and to develop a perspective reflective of this charge. The testimony of the Division's agents is diametrically opposed with that produced by the licensee. The acceptance of one automatically requires the rejection of the other.

The inquiry is whether there is such evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the judgment rendered. The accepted standard of persuasion governing the trier of facts is that the details are probably founded in truth.

This proceeding presents a purely factual question.

The guiding rule in these matters is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. 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); Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501 (App. Div. 1956). By a preponderance of the evidence is meant evidence which is of greater weight or more convincing than that which is offered in opposition. 32A C.J.S. Evidence, sec. 1021 at p. 1051, and cases cited therein.

I have heard the testimony of the last two witnesses only. Both witnesses were officers of the corporate licensee and neither of them witnessed the acts alleged in the charge. By consent of the parties, I was substituted for the previous Hearer, who had terminated his employment with this Division in order to accept another State post. He heard the testimony

of all of the other witnesses. Thus, I did not have an opportunity to observe the demeanor of any of the witnesses as they testified, except as above noted, and to thereby formulate an opinion concerning their credibility, except to evaluate it on the record before me.

I find that testimony offered by the Division and by the licensee is in a complete state of equipoise. Despite intensive cross examination of the various witnesses by competent attorneys for the Division and for the licensee, their testimony remained basically unshaken. I find that the testimony of the contesting parties is equiponderant and therefore conclude that there appears to be a lack of the necessary preponderance of the evidence to find the licensee guilty of the charge. Accordingly, I recommend that the licensee be found not guilty and that the charge herein be dismissed.

#### Conclusions and Order

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

Pursuant to my request oral argument was had before me.

I find that the matters contained in the exceptions have either been fully considered by the Hearer in his report or are without merit.

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

Accordingly, it is, on this 25th day of May 1973,

ORDERED that the charges herein be and the same are hereby dismissed.

Robert E. Bower  
Director

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary  
Proceedings against

Chester J. and Anthony P.  
Roszkowski,  
t/a Chester's Bar & Grill  
15-17 East 21st Street  
Bayonne, New Jersey

Holder of Plenary Retail Consumption  
License C-99, issued by the Municipal  
Council of the City of Bayonne.

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Patrick D. Conaghan, Esq., Attorney for Licensees  
Carla D. Bello, Esq., Appearing for Division

CONCLUSIONS  
and  
ORDER

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to the following charge:

"On October 17, 1972, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Timothy K. ---, age 15; in violation of Rule 1 of State Regulation No. 20."

In substantiation of the charge, agent V testified that, accompanied by ABC agents S and G, he arrived in the area of the licensed premises (consisting of a barroom on one side, a pizza parlor on the other side and a banquet room in the rear) on October 17, 1972 at 8:55 p.m. He and the other agents sat in a car parked in a lot across the street from the licensed premises which afforded them an unobstructed view of the premises.

At approximately 9:50 p.m., he observed a car containing six youthful looking persons park diagonally across the street from the licensed premises. One male got out of the car and entered the licensed premises. Prior to entering, he was empty-handed. Upon emerging from the premises several minutes later, he observed the male, later identified as Timothy K---

carrying a brown paper bag. Between the time the youth entered the licensed premises and emerged therefrom, the agents backed their car up the one-way street to the rear of the car wherein Timothy was a passenger. Timothy approached the car in which he had been riding, spoke to the driver, received the keys to the car and was about to put the package in the trunk thereof when agents V and S got out of their car, approached Timothy and identified themselves to him.

In response to agent V's inquiry, Timothy asserted that he was eighteen years of age; that he had beer in that bag which he purchased in Staten Island. Upon further questioning, Timothy asserted that he had purchased the beer in Brooklyn and later, that he "...found it in the garbage."

Agent V opened the bag and found it contained six cans of Pabst Blue Ribbon beer, "...ice cold to the touch."

The witness, accompanied by the other two ABC agents and the minor, entered the licensed premises. Agent V identified himself to Anthony Roszkowski, a co-licensee, and informed him of the alleged violation. In the barroom, Timothy again asserted first, that he purchased the beer in Staten Island, later that he purchased the beer in Brooklyn, and, finally, that he "...found it in the garbage." The seized beer was received in evidence.

On cross examination, agent V testified that he was specifically assigned to the subject investigation based on a complaint that minors were being served alcoholic beverages at the licensed premises.

It was the agent's recollection that a six-pack of Pabst costs approximately \$1.35. Upon checking the licensees' cash register tape, he found no such item recorded. Both Roszkowski and the minor denied the alleged sale of the beer.

Timothy testified that he was born on February 5, 1957 and he was, therefore, fifteen years old on the date alleged in the charge.

On cross examination by the licensees' attorney, Timothy testified that on the night of October 17, he entered the pizza area of the licensed premises and upon ascertaining that it was closed he departed therefrom. He denied purchasing the beer therein. He asserted that he had been to a party in Staten Island that night and was drunk. He got the six-pack in Staten Island; he doesn't remember where. He had it in the rear seat. Upon leaving the car for the pizza parlor, he had the six-pack in his hand in order to place it in the trunk. He put the beer down, entered the licensed premises for the pizza, and upon exiting therefrom, he was not carrying anything.

The testimony of agents S and G was substantially corroborative of the testimony presented by agent V.

In defense of the charge, Anthony Roszkowski, a co-licensee, testified that he recalled Timothy's entry into the licensed premises on the night of October 17th. Timothy asked for a pie, and upon being informed that the kitchen area was closed, walked out. He denied selling the minor alcoholic beverages that night. He rings up all sales, including package good sales, on the cash register.

The sharp 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. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960). 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).

I have had an opportunity to observe the demeanor of the witnesses as they testified at this plenary hearing, and to evaluate and assess such testimony. I am persuaded that the testimony of the agents is both credible and forthright and stands in a much more favorable light than that of the licensees' witnesses.

I have taken particular note of the fact that the Division witnesses were extensively cross-examined by the attorney for the licensees and I am imperatively persuaded that their testimony was not contrived or improperly motivated in order to inculcate an innocent licensee. On the other hand, it is my view that the minor compounded his misdeed by fabricating his testimony in an attempt to favor and assist a licensee who had unlawfully delivered to him alcoholic beverages as charged. Further, it is clear that Roszkowski's testimony was prompted by self-interest.

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

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

It is recommended that the licensees be found guilty of the charge.

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

Conclusions and Order

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

I find that the matters contained in the exceptions have either been fully considered by the Hearer in his report or are without merit.

Licensees contend that the penalty recommended by the Hearer is too severe. I find that the recommended penalty is not unreasonable under the circumstances herein and is consonant with present Division policy. Consequently, having carefully considered the entire record herein, including transcript of testimony, exhibits, the Hearer's report and the exceptions filed with respect thereto, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of May 1973,

ORDERED that Plenary Retail Consumption License C-99, issued by the Municipal Council of the City of Bayonne to Chester J. and Anthony P. Roszkowski, t/a Chester's Bar & Grill, for premises 15-17 East 21st Street, Bayonne, be and the same is hereby suspended for the balance of its term, viz., midnight June 30, 1973, commencing at 2 a.m. Wednesday, June 6, 1973; and it is further

ORDERED that any renewal license which may be granted be and the same is hereby suspended until 2 a.m. Monday, July 16, 1973.

  
Robert E. Bower,  
Director.