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

BULLETIN 2138 March 18, 1974

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - THE BACK STREET LOUNGE, INC. v. NEWARK.

The Back Street Lounge, Inc. Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	On Appeal CONCLUSIONS and ORDER

Schechner and Targan, Esqs., by David Schechner, Esq., Attorneys for Appellant
William H. Walls, Esq., by John C. Pidgeon, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an apeal from action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (Board) which on June 28, 1973 denied renewal of appellant's plenary retail consumption license for the current license period for premises 11 Lafayette Street, Newark.

The petition of appeal filed by appellant contends that the action of the Board was erroneous in that (1) appellant was never noticed of a hearing at which the determination of renewal of its license would be made; (2) appellant was never furnished the reasons upon which the Board made its determination, and (3) the determination of the Board was not based upon sufficient reasons upon which denial of renewal could be predicated; for all of which the actions of the Board were arbitrary and unreasonable.

The Board answered appellant's contentions with a general denial, coupled with a declaration that the factual background concerning appellant's conduct under its license was sufficient, in its discretion, to deny the license. Additionally, the Board's resolution denying appellant's application for renewal determined that the renewal would not be for the public good and, further, that the Police Department recommended denial.

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

witnesses. Although the Board offered a transcript of the testimony taken at the hearing before it pursuant to Rule 8 of State Regulation No. 15, a letter addressed to this Division by Ira N. Rubenstein, Certified Shorthand Reporter, who had been assigned the task of stenographically reporting the Board hearings, was received on the morning of the hearing in this Division. That letter informally indicated that no transcript of testimony had been prepared in that no testimony was elicited save for the introduction of the police reports given to the Board.

I

At the outset of the hearing counsel for appellant moved for an order by the Director remanding the matter to the Board. This motion was predicated upon language contained in Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App.Div. 1957), wherein the court stated:

> "... Indeed, where the facts of a case are in dispute and the local board does not permit the licensee to offer evidence in his behalf, the Division would not even know what action the local board would have taken had it been apprised of all the facts. Would (or should) the Division sit as a Board in such a case?"

Recommendation to the Director with respect to the motion was reserved until the hearing was completed in order that all the evidence available to the parties had been accepted.

II

The Board offered the records concerning the licensee, together with the records of this Division, and rested. Those records may be capsulated as follows:

On January 14, 1972, a bartender employed on the premises had been found with a weapon.

On May 15, 1972, the license application had failed to show that one Casper Orlando had a beneficial interest in the license and that the licensee had failed to keep proper books of account, in consequence of which the license had been suspended for thirty-two days. Re The Back Street Lounge, Inc., Bulletin 2087, Item 1B.

On April 25, 1972, the licensee was charged with employing a person with a criminal record. On the same date the licensee was further charged with failing to obtain a disposal permit for the disposition of alcoholic beverages.

On August 10, 1972, the licensee was charged with failing to keep a list of employees and, on the same date, with permitting an act of violence on the licensed premises.

On November 29, 1972, the licensee was charged with failing to keep a proper list of employees on the premises.

On January 17, 1973, the licensee was charged with permitting prostitution-solicitation on the licensed premises, in consequence of which the license was suspended for ninety days. Re The Back Street Lounge, Inc., Bulletin 2090, Item 5.

On December 4, 1973, the licensee was charged with failing to file a report disclosing the alcoholic beverages acquired and sold, in consequence of which the licensee paid a fine.

Additionally, the police reports noted matters before the Board of charges alleging that appellant permitted and suffered a brawl in its licensed premises, and falsification of application for renewal, both of which charges are presently pending.

The Board counsel, at request of appellant, withdrew reference to the cited matter of January 14, 1972, in that appellant was not then the owner of the premises. No reference was permitted to a pending indictment against the said Orlando since I found that it was not relevant to this matter.

The said proffer of the record represented the Board's defense to the appellant's contentions.

Casper Orlando, sole stockholder of the corporate appellant, testified that the record against appellant is barren of any conscious wrongdoing. He explained that the improper designation of his wife as the owner of the corporate stock on the initial license application was made because he is "superstitious" of having possessions. As soon as the violation was called to attention, an immediate correction followed.

The charges revolving about an employee with a criminal record was apparently explained satisfactorily to the authorities, he said, so that no suspension resulted. He stated that, when he had learned of the criminal record of the employee, he called the Newark Police Department and was advised that, since the conviction of the employee occurred prior to two years, said employee was not disqualified. Although this information was totally incorrect, reliance upon it was considered in sufficient mitigation as not to warrant a suspension of license.

The charges concerning the permitting of a brawl on the licensed premises, allegedly occurring on November 29, 1972, are still pending. By his version, this alleged incident had no connection with the licensed premises other than the fact that the parties involved had used the telephone in these premises to summon police.

The charges stemming from his failure to have the employees properly listed on a required form and from his failing to have filed reports of the source of alcoholic beverages resulted from either lack of understanding of the requirements or oversight; none stemmed from any purposeful intention to avoid the regulatory requirements of the Division.

The single serious charge which resulted in a finding of guilt and substantial suspension of license established that appellant had permitted solicitation for prostitution in the licensed premises. He stated that in that matter (Re The Back Street Lounge, Inc., Bulletin 2090, Item 5, supra) he was so convinced of his innocence that he appeared at the hearing before the Division without counsel. Although he vigorously denied the charge, the hearing officer preferred to believe the agents and not him. He believed that the recommendation of suspension was an injustice.

The crucial issue on this appeal is whether the record substantiated and justified the Board's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where the renewal of a license is sought, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, supra. As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (1946):

> "The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No lisee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28.... The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of

that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support." In re 17 Club, Inc., 26 N.J. Super. 43, 52 (App.Div. 1953).

The line of demarcation between what is a proper exercise of discretion by a municipal issuing authority and what is a clear abuse of that discretion is not finite and often becomes beclouded by imponderables and variables. The Director of this Division has unhesitatingly reversed the action of the municipal authority where its action was manifestly unreasonable and arbitrary. See Board of Commissioners of Bayonne v. B & L Tavern, Inc., 42 N.J. 131 (1964), in which no complaint had been lodged against the licensee for more than a year-and-a-half. An illustrative sampling of instances in which the Director reversed the issuing authority upon denial of renewal embraces such situations as: absence of any charges preferred against the licensee (DeVries v. Passaic, Bulletin 1994, Item 1; Burks v. Passaic, Bulletin 1967, Item 4) or where the record involved a violation six years prior (Slobodian v. Passaic, Bulletin 1855, Item 1) or where the only serious charge against the licensee was pending at renewal date (Charlie's Capri, Inc. v. East Newark, Bulletin 1901, Item 1) or where the occurrence of a homicide within the licensed premises gave rise to no charge against the licensee (E A V Liquors & Bar, Inc. v. Paterson, Bulletin 1928, Item 2) or where newspaper accounts of difficulties arising within the licensed premises were not followed by any charges (Skipper's Inc. v. Long Branch, Bulletin 1843, Item 2) or where the Board did not approve of the type of patrons the licensee attracted (Stratford Inn, Inc. v. Avon-by-the-Sea, Bulletin 1775, Item 2).

Conversely, the Director has affirmed denials of renewal applications where licensee sustained a forty-days suspension for permitting an indecent dance followed by a few minor incidents (570 Main, Inc. v. Passaic, Bulletin 1992, Item 1); where there were five minor complaints, none of which resulted in suspensions (Craner & Pilon v. Paterson, Bulletin 1918, Item 1); where there was loud and noisy conduct of patrons, not sufficient to cause suspensions (111 Park Street Corporation v. Orange, Bulletin 1935, Item 1 and R.B. & W. Corporation v. North Caldwell, Bulletin 1921, Item 1). The mere noise disturbance and "college boy pranks" without disciplinary proceedings (Edelson v. Paterson, Bulletin 1999, Item 4) in one instance, and the presence of homosexuals within the premises resulting in no suspension of license (Danny's Red Ball, Inc. v. Elizabeth, Bulletin 1978, Item 1) were both sufficient bases for denial of renewal.

The attorney for appellant argues that, in order to properly refuse to grant appellant's application for renewal, it must present and prove charges as must be specified. Of course, this is not so. As the court expressed it in Tumulty v. Dunellen, Bulletin 1487, Item 4, aff'd App. Div. 1963, see Bulletin 1519, Item 1:

"... The problem before the Director was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future...."

See Downie v. Somerdale, 44 N.J. Super. 84.

It is proper for municipal issuing authorities in passing upon applications for renewal of liquor licenses to take into account not only the conduct of licensees but also conditions not attributable to its conduct which render a continuance of a tavern in particular location against public interest. Nordco, Inc. v. State, supra.

The courts will interfere in the exercise of discretion by the municipal issuing authority only in the case of manifest error, clearly unreasonable action or some more untoward impropriety. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598, 600 (1955). Cf. Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970).

The above illustrations of the applicability of the Director's appellate function clearly separate those typical situations when the action of the municipal authority represents an abuse of discretion from those where that action is proper. In the instant matter the record of appellant, containing as it does a lengthy suspension for a grave charge, coupled with a series of minor but repeated situations, lead the Board to no other conclusion than appellant's license should not be renewed. Such determination should not be reversed.

It is accordingly concluded that appellant has not sustained the burden of establishing that the action of the Board was erroneous or an abuse of discretion and should be reversed, as required by Rule 6 of State Regulation No. 15.

I therefore recommend that the action of the Board be affirmed, and the appeal be dismissed.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of

the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 16th day of January 1974,

ORDERED that the action of respondent Board in denying renewal of appellant's plenary retail consumption license 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 - SALE TO MINOR - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against Viktoria & Andrew Neubauer t/a Andy's Green Knoll Inn 645 Route 202-206 Bridgewater Township P.O. Somerville, N. J., Holder of Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Bridgewater.	CONCLUSIONS and ORDER

Salvatore J. Vuocolo, Esq., Attorney for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday, January 12, 1973, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages directly or indirectly to a person under the age of eighteen (18) years, viz., Maureen T---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises, in violation of Rule 1 of State Regulation No. 20."

The Division's case was presented through the testimony of the minor, a female who accompanied the minor to the licensed premises, and a local police officer.

Maureen --- testified that she was born on October 30, 1955, and was therefore seventeen years of age on the date alleged in the charge.

Accompanied by her male friend, a female identified as Debra Buttenberg and Debra's male friend, Maureen entered the licensed premises on the evening of the date specified in the charge. After settling down at a table, the group proceeded to the bar to order a drink. Maureen ordered and received from "a young kid with kind of long hair and glasses", who was standing behind the bar, a rum-and-coke. The drink was paid for by Maureen's male friend. The person serving the drink asked if she was eighteen years of age. Maureen replied "yes" and he said "okay." He did not request proof of age. Upon returning to the table, Maureen consumed the drink. While their male companions were playing pool, the females were confronted by a police officer who asked them for their ID cards.

On cross examination the witness conceded that, upon confrontation, she identified herself to Detective Peter Sabilia (a member of the local police) as "Jane Turner" and handed him an ID card bearing the name "Jane Tarner" which she had obtained from a female friend that evening. She later admitted to the police officer that she identified herself falsely to him and that she had given him a false ID card. She did not know the identity of the bartender. Maureen asserted that the bartender did not request that she sign a statement respecting her age at or before he served her the alcoholic beverage, nor did he request to see her ID card.

Debra E. Buttenberg testified that she accompanied Maureen and two male acquaintances to the licensed premises on the night of January 12, 1973, for the purpose of having a drink. She and Maureen ordered a drink. The bartender was "a young man, he had longish hair." She observed him hand her a drink which she described as "a rum and coke" and further observed her consume the drink. Debra did not hear Maureen order the drink. Thereafter local police checked Maureen's and Debra's age.

On cross examination Debra admitted that she displayed a driver's permit which she had found to the police officer who questioned her.

Both females testified that there was only a small amount of liquid remaining in the glass from which Maureen was consuming her drink at the time the police officers arrived.

Peter Sabilia, a detective in the local police force, testified that, accompanied by several other police officers, he entered the licensed premises on the night of January 12 in order to "check on the patrons" thereof. He confronted Maureen and Debra who were sitting at a table and, after establishing their ages, he ascertained from them that they had been drinking in the premises. He described the bartender as a tall, thin, white male, wearing long hair.

On cross examination Sabilia testified that, prior to revealing her true identity, Maureen represented herself to be someone else and furnished him with a false identification card.

In defense of the charge, Andrew Neubauer testified that he and his mother Viktoria Neubauer, are the co-licensees. Because of his illness he was not in the licensed premises on January 12, 1973. His son tended bar in his place. They have a strict policy concerning sales to minors. He had never seen the individual who identified herself on the witness stand as Maureen prior to the hearing.

Viktoria Neubauer testified that she has operated the licensed premises since the sale of liquor was legalized in 1933. She has no record of violation of the liquor laws. She was not in the tavern at the time of the alleged incident. She never saw Maureen or Debra prior to the day of the hearing.

The licensees' attorney energetically moved for dismissal of the said charge for reasons which may be summarized as follows: (1) there was no proof that the drink allegedly ordered and consumed by Maureen was an alcoholic beverage; (2) Maureen's identity was not established; (3) the age of the alleged minor was not lawfully established, and (4) the guilt of the licensees was not established beyond a reasonable doubt.

I

In considering the first contention advanced by the licensees, I am mindful that a similar contention was resolved in State v. Marks, 65 N.J.L. 84 (Sup.Ct. 1900) wherein it was held that proof that a vendor, in compliance with the request of a vendee for a half-pint of whiskey, sold to him a half-pint of liquor and received payment for it as whiskey, will, in the absence of proof to the contrary, justify the conclusion that the liquor sold was in fact whiskey.

In Holmes v. Cavicchia, 29 N.J. Super. 434, 436 (App. Div. 1954), wherein minors testified that they had ordered beer by the glass, the court held that there is an implication that a purchaser received that which he has ordered and paid for, citing State v. Marks, supra; Lewinsohn v. U. S., 278 F. 421, 426; 48 C.J.S. Intoxicating Liquors, sec. 371(a), p. 548 and sec. 371 (c), p. 549. The cases in this Division are myriad wherein this principle has been followed.

From the evidence adduced at the hearing I find that Maureen ordered, received and consumed a rum-and-coke, and that a rum-and-coke is an alcoholic beverage within the purview of N.J.S.A. 33:1-1(b).

II

Licensees' argument that Maureen's identity was not established is without merit. Granted that the female identified herself falsely to the local detective and presented him with an unauthentic ID card, I am convinced that the female who

identified herself as Maureen on the witness stand is the same person who is named in the charge (which is the subject matter of the within inquiry) and subpoenaed by the Division to testify herein. Although the licensees have raised the question concerning the identity of the witness who testified herein, they have not introduced a scintilla of evidence to dispute the minor's identity in substantiation of that defense.

III

Licensees' contention that Maureen's age was not established is not valid. It is well settled that one may testify to one's age. State v. Huggins, 83 N.J.L. 43, 44 (Sup.Ct. 1912), aff'd 84 N.J.L. 254 (E. & A. 1913); cf. State v. Girone, 91 N.J.L. 499 (Sup.Ct. 1918). The victim's testimony as to her age is sufficient, even when there is no corroboration. State v. Calabrese, 99 N.J.L. 312, 315 (Sup.Ct. 1924), aff'd p.c. 100 N.J.L. 412 (E. & A. 1924). See also 2 Wigmore, on Evidence (3rd ed. 1940), sec. 667 at 785-786. This principle was upheld in the recent case of State v. Riley, 111 N.J. Super. 551 (App.Div. 1970).

IV

Finally, 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 not criminal, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960).

The 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.

Although I strongly deplore the deception employed by the minor on the date in question, it is my view that she testified forthrightly at this hearing. I am imperatively persuaded that her version had a substantial ring of truth with respect to the alleged sale, service, delivery and consumption of an alcoholic beverage in the licensed premises. It is apparent that, despite an intensive and searching cross examination which clearly manifested the witnesses' deception concerning her true identity on the date charged herein, her testimony concerning the alleged sale, service, delivery and consumption remained unshaken.

I conclude therefore that a fair evaluation of the evidence clearly preponderates in favor of a finding of guilt, and I so recommend. Inferentially, I must also recommend a denial of licensees' motion for dismissal of the charge.

The licensees have no prior adjudicated record of suspension of license. I further recommend that the license be suspended for thirty days.

Conclusions and Order

No exceptions to the Hearer's report were filed within the time limited by Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 14th day of January 1974,

ORDERED that Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Bridgewater to Viktoria & Andrew Neubauer, t/a Andy's Green Knoll Inn for premises 645 Route 202-206, Bridgewater Township, be and the same is hereby suspended for thirty (30) days, commencing 2:00 a.m. on Thursday, January 24, 1974 and terminating 2:00 a.m. on Saturday, February 23, 1974.

Robert E. Bower
Director

3. DISCIPLINARY PROCEEDINGS - HOURS VIOLATION - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

Blunt's Place Inc.
t/a Blunt's Place
1292 East State St.
Trenton, N. J.,

Holder of Plenary Retail Consumption License C-36, issued by the City Council of the City of Trenton.

CONCLUSIONS and ORDER

Lemuel H. Blackburn, Jr., 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 entered a plea of not guilty to a charge alleging that on Friday, July 6, 1973 at approximately 12:20 a.m., it sold alcoholic beverages for off-premises consumption, in violation of Rule 1 of State Regulation No.38.

On behalf of the Division ABC agent M testified that on the date of the charge he and agent S entered the licensed premises, which contained a C-shaped bar at which six persons were seated. A barmaid (later identified as Marian Mosman) was in attendance at the bar and the agents ordered a rum-and-coke and a beer, respectively. Ten minutes after their arrival, at about 12:30 a.m., an unescorted woman entered and ordered, received and paid for a full bottle of scotch whisky. She immediately departed the premises and, after the agents briefly conversed about the apparent illegal sale, agent S followed the unidentified woman out of the premises. Agent M then asked the barmaid for a bottle of rum "to go" but the barmaid refused such sale unless the seal of the bottle was broken and some portion of the contents consumed. Agreeing to this procedure, the barmaid obtained a bottle of rum, broke the seal and poured a small portion into the agent's glass and recapped the bottle. The agent placed the bottle in his pocket after receiving change from the marked money he had given the barmaid in payment for the bottle. The agent then departed the premises and joined agent S outside; agent S had been unable to locate the unidentified woman who had made the prior purchase.

Both agents returned to the licensed premises a few minutes thereafter and confronted the barmaid with their credentials as well as an oral charge that an illegal sale of alcoholic beverage

had been made. The barmaid vigorously denied that any sale had been made for off-premises consumption, declaring that the sale made had been intended for consumption within the premises.

ABC agent S testified in partial corroboration of the testimony of agent M. He described the entry of the unidentified woman and the illegal sale made to her. He recounted his inability to discover the whereabouts of that woman following her departure, but described his joinder with agent M outside the premises shortly afterward. Upon their return into the premises and proffer of identification, he related the denial by the barmaid that any sale of alcoholic beverage had been made, either to the unidentified woman or to agent M. He described that woman as being about thirty-eight or forty years of age and of short stature.

The licensee introduced the testimony of James L. Billups, a patron of the licensee's establishment on the evening of the agents' visit. He explained that he is a tenant of the licensee, lives directly above the premises and, as he is single, spends considerable time there. He drinks no alcoholic beverages but enjoys visiting licensee's tavern for conversational purposes. On the evening in question he recalled the visit of the agents, saw one of them depart and the other ask for a full bottle. Despite the admonition by the barmaid that the bottle must be consumed on the premises, as soon as the agent was served and the barmaid's back was turned, the agent grabbed the bottle and left. It was he who called the barmaid's attention to the prompt departure of the agent, in consequence of which the barmaid ran to the side door in an attempt to recall the agent. He saw no prior sale to any unidentified woman as described by the agents. He emphasized the barmaid's later denial to the agents that any sale had been made of the alcoholic beverage for off-premises consumption.

We are dealing here with a purely disciplinary measure and its alleged infraction. Such measures are civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App.Div. 1951). Thus the proof must be established by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Evidence to be believed must be credible in itself. Thus I have carefully observed the demeanor of the witnesses as they testified. There is no doubt that the testimony of the agents represents a true and accurate account of the events as they occurred. The testimony of the agents is factual and convincing. The argument of the licensee that the sale of the bottle of rum to the agent was as a "set-up" given for on-premises consumption goes squarely against long-accepted custom in licensed establishments where, in such matters, the cap of the sold bottle is always disposed of by the licensee.

The absence of the barmaid to testify on behalf of the licensee, who depended solely upon the testimony of his tenant, left the recital of a sale to an unidentified woman uncontroverted. Albeit the tenant stated that he did not see any woman appear and make a purchase during the agents' presence, it is hardly likely that the agents could have individually or jointly conjured up such a story.

I thus conclude, upon my full consideration and evaluation of the evidence, that it clearly preponderates in support of a finding of guilt, which I accordingly recommend.

Absent prior adjudicated record, I further recommend that the license be suspended for twenty days. Re Jeter, Bulletin 1986, Item 3.

Conclusions and Order

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

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

Accordingly, it is, on this 14th day of January 1974,

ORDERED that Plenary Retail Consumption License C-36, issued by the City Council of the City of Trenton to Blunt's Place Inc., for premises 1292 East State Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing 2:00 a.m. on Tuesday, January 28, 1974 and terminating 2:00 a.m. on Monday, February 18, 1974.

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - GAMBLING - POSSESSION OF SLIPS - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

Maywood Inn Corp.
118-124 W. Pleasant Avenue
Maywood, N.J.,

Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Maywood.

CONCLUSIONS and ORDER

Russell & McAlevy, Esqs., by Dennis D. S. McAlevy, Esq., Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE ACTING DIRECTOR:

Licensee pleads not guilty to a charge alleging that on January 22 and 27, February 1 and 3, 1973 it permitted gambling to occur on the licensed premises, viz., wagering on horse races; and, further, that on February 3, 1973 it possessed and had custody of gambling slips and memoranda therein, in violation of Rule 7 of State Regulation No. 20.

ABC agents P, D and M testified on behalf of the Division. Agent P stated that, prior to the dates listed in the charge, he and other agents of this Division had visited the licensed premises and observed what he believed to be gambling activity.

Returning to the premises again with ABC agent D on January 22, 1973, he engaged the bartender, later identified as Branko Badurina, in conversation and eventually placed a horse race bet with him. Returning to the premises on January 27 with ABC agent D, he observed agent D place a bet with the same bartender. Thereafter, on the same date, agent P observed the bartender give money he had received from the agents to a patron whom the agents understood to be a bookmaker.

On February 1, 1973 the agents returned to the licensed premises and learned from the same bartender that a prior bet they had made had been a successful bet, and they then received the winnings from the bartender. Additional bets were made by the agent with the bartender.

Arrangements were thereafter made by the agents with the Bergen County Prosecutor's Gambling Squad and the local police authorities for a raid on the premises. A "marked" money list was prepared and, on February 3, 1973 agents P and D entered with that money. A bet slip and money to cover the bet was given to the bartender, Branko, whereupon, by pre-arranged signal, the remaining officers entered the premises to conduct the raid. The "marked" money was retrieved by one of the officers, and the bartender was placed under arrest.

Agents D and M testified in substantial corroboration of the testimony given by agent P.

Testifying on behalf of the corporate licensee, Victor Rivera stated that he is its manager and that Branko Badurina was the day bartender, who had worked as such for about eight months. He had no knowledge of Branko's involvement in gambling and once apprised of it, had summarily discharged him.

William Damrau, a Councilman of Maywood, testified that he had no knowledge of any gambling activity which allegedly took place in the licensed premises, and was in the premises the evening of February 3, 1973. However, he admitted that he was not present at any of the times when the alleged gambling took place, as testified by the Division witnesses.

In adjudicating matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature, and not criminal, and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). In appraising the factual picture presented and having the opportunity to observe the demeanor of the witnesses, as they testified, their credibility has been assessed. 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 under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

That gambling took place on the licensed premises was not seriously challenged. The testimony of the agents was uncontroverted. The primary contention of the licensee was that in view of the fact that the activity of the bartender was unknown to the manager, such lack of knowledge should serve in mitigation of any penalty to be assessed.

I find, from the facts adduced herein, that the charge has been established by a fair preponderance of the credible evidence. Thus, I find the licensee guilty as charged.

The Division file reveals the receipt of a letter from the Mayor of Maywood on behalf of himself and the Council, calling attention to the eighteen-year unblemished record of the licensee.

Yet I am not unmindful of the fact that the alleged gambling activity, as observed by agents of the Division, took place on numerous dates. I shall, therefore, impose the precedential penalty under these circumstances, viz., a suspension of license for ninety days.

Accordingly, it is, on this 11th day of March 1974,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Maywood to Maywood Inn Corp., for premises 118-124 W. Pleasant Avenue, Maywood, be and the same is hereby suspended for ninety (90) days, commencing 2 a.m. Friday, March 22, 1974 and terminating 2 a.m. Thursday, June 20, 1974.

Joseph H. Lerner
Acting Director