

*Ambrose* 29  
Ambrose

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

BULLETIN 1986

July 14, 1971

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - RADER v. WOODBRIDGE.
2. APPELLATE DECISIONS - SCHWARTZ v. NEWARK.
3. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS.
4. DISCIPLINARY PROCEEDINGS (Randolph Township) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Atlantic City) - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. STATUTORY AUTOMATIC SUSPENSION (Asbury Park) - ORDER STAYING SUSPENSION.
7. DISCIPLINARY PROCEEDINGS (Passaic) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. STATUTORY AUTOMATIC SUSPENSION (Lodi) - ORDER STAYING SUSPENSION.

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

BULLETIN 1986

July 14, 1971

1. APPELLATE DECISIONS - RADER v. WOODBRIDGE.

Peter Rader, )  
Appellant, )  
v. ) On Appeal  
Council of the Township ) CONCLUSIONS  
of Woodbridge, ) and  
Respondent. ) ORDER

-----)  
Venezia, Nolan & Rebeck, Esqs., by James P. Nolan, Esq., Attorneys  
for Appellant  
Isadore Rosenblum, 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 Council of the Township of Woodbridge (Council) whereby it denied the application for place-to-place transfer of appellant's plenary retail consumption license from premises located at 281 Florida Avenue, to premises 501-503 Route 27, Woodbridge Township. The proposed transfer is from premises in Hopelawn section to premises in Iselin, both component sections of Woodbridge Township. In its resolution, the Council denied the transfer for the following stated reasons:

"1. At the present time, there are approximately fourteen (14) liquor licenses in effect in the Iselin section of the Township of Woodbridge and there has been no testimony indicating the need for an additional license within the area.

2. The proposed site is adjacent to the Iselin First Aid Squad Building and the granting of the transfer would constitute an added danger to the ingress and egress of the emergency vehicles of the First Aid Squad.

3. St. Cecelia's Church and School is located in the vicinity of the subject site and the granting of this transfer would constitute an added hazard to the large number of students who must walk past the site on the way to and from school.

4. U. S. Route 27 is a heavily traveled road and the granting of the applicant's request would considerably increase the hazards already existing in the area."

In his petition of appeal, appellant alleged that the Council's action was "...illegal, arbitrary, capricious, unreasonable and contrary to the evidence submitted by the Appellant at the hearing before the said Municipal Council ... and that the denial ... was an unreasonable use of power by said Council."

Gene Tomasso, president of the Council, testified that there is an abundance of licenses in the proposed area, that accidents are frequent in the immediate area, and a proposed railroad station a quarter of a mile away will contain a site which will house one thousand cars, not now in the area. The members of the Council were extremely concerned about the traffic and parking situation in the area. A present underpass of the railroad off Route 27, near the proposed location, is presently inadequate to accommodate the traffic flow, and no funds appear available for its improvement. The witness is an experienced realtor and as such, is aware that property could be purchased by the licensee in an area nearer the former location. Interrogated further:

"Q Let me ask you one other question. Were there any other factors you personally took into consideration other than the traffic you have now mentioned in arriving at your determination to vote against a transfer?

A Yes. All of that being overshadowed by what I said that council had taken into consideration the wishes of the people in the area. They are very concerned. There is a real problem in this general area. I think the zoning has been bad. It is being corrected in a new master plan coming out, but the people are very concerned. It is a very nice residential area that is being emasculated, and we are trying to control it until the new master plan comes in."

The members of the Council at the hearing below, subjected the appellant and his witnesses to a most extensive inquiry. The type of building, parking facilities, entrances and exits, number of patrons anticipated, the use of adjoining premises, availability of other sites and the record of the appellant in the community were fully explored.

As the Court stated in Ward v. Scott, 16 N.J. 16(1954):

"Local officials who are thoroughly familiar with their community's characteristics and interest and are the proper representatives of its people are undoubtedly the best equipped to pass initially upon such application ... 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. U.S. 231 U.S. 474 (1913)."

The Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Fanwood v. Rocco, 58 N.J. Super. 306 (App. Div. 1960). Hence the guiding principle involved here is best expressed as follows: In order for appellant to succeed in the instant appeal, it is incumbent upon it to show an abuse of discretion on the part of the respondent in denying the application for transfer. To meet this burden, appellant must show manifest error or an abuse of discretion on the part of the respondent. Nordco v. State, 43 N.J. Super. 277 (App. Div. 1957). Cf. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

The appeal was heard de novo supplemented by the transcript of the hearing held by the Council pursuant to Rules 6 and 8 of State Regulation No. 15. Full opportunity was afforded counsel to present testimony and cross-examine witnesses.

In the hearing before the Council, the appellant testified that his prior location was taken over by the State for highway purposes. He contracted to purchase this new location which contained a masonry building forty feet wide, one half of which would be used for the proposed facility and the other half for another commercial enterprise. While he had been in the tavern business for twenty-five years in that community he was not particularly familiar with the conditions surrounding the new location. He alleged that he had tried to find a suitable location in the Hopelawn area without avail. The new location in the Iselin section would permit parking along the side and at the rear of the building. The shoulder of the road directly in front of the premises would be available for cars to unload or receive goods.

The brother of the appellant testified that he bought another parcel of property in the municipality with the express purpose of locating a tavern on it, but could not do so as the property was in a residential zone. After an extensive search the proposed site was located. Finally, he added that appellant could not find suitable premises near their former location that were economically feasible.

Gloria L. Christian, a realtor, detailed a study she made of the proposed new site, its usefulness and proposed use. A tavern would not materially affect local traffic or cause substantial additional parking difficulties. She presented a survey of the premises showing the location of the building and the twenty-two parking spaces it would contain.

Six objectors testified. A crystallization of their testimony indicated strong objection because of their apprehension of increased traffic and parking problems. School children who were required to walk past the premises, and aggravated traffic conditions on Route 27 were some of the elements of their objections. The quiet residential area in the rear of the premises would be negatively affected if patrons were permitted to exit to the rear street. Alongside the premises is a residence, and adjoining that is the Iselin First Aid Squad, an officer of which testified that present parking made it sometimes difficult to withdraw their emergency vehicles. A short distance away is a VFW clubhouse with a club license whose members add to the parking problem.

At the plenary hearing held in the Division, both the appellant and Council introduced additional testimony. The appellant offered testimony of David Mendelson, a traffic and transportation consultant, whose experience qualified him as an expert in the field of traffic. From his analysis which he made for the appellant relative to the potential traffic conditions, he estimated that the use of the proposed licensed premises with a capacity of thirty patrons would result in an additional twenty cars at the new location. This, in his opinion, would have no appreciable effect on traffic congestion in Route 27. No prognosis was offered concerning any effect upon the residential area in the rear, nor was any speculation added concerning a proposed one thousand car parking area adjacent to the high-speed railroad station under construction. Hence, traffic or parking would not be problems experienced by the area if the new location were utilized by the appellant.

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. Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970). In this case and the Fanwood case, supra, the Court has laid great emphasis in the conclusion that the decision of the local body should, where reasonable, be upheld.

In the instant case it is apparent that the Council had before it all of the substantiative facts upon which a decision could be predicated, and that decision was adverse to the appellant. There is no evidence that the Council was improperly motivated or acted arbitrarily.

A parenthetical observation is in order. From the testimony it appears that the Council members considered other locations for the licensed premises are available in the community. The appellant may not have been assiduous enough or sought sufficient help to acquire a more desirable location. In any event, an owner of a license or privilege acquires through his investment an interest which is entitled to some measure of protection. Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). To aid a vigorous effort of the appellant to discover a new location, it is recommended that the Council extend all possible cooperation.

After considering all the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

#### 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 25th day of May 1971,

ORDERED that the action of the respondent Council of the Township of Woodbridge 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 - SCHWARTZ v. NEWARK.

Max & Harry Schwartz,  
t/a Schwartz Tavern,

Appellants,

v.

Municipal Board of Alcoholic  
Beverage Control of the City  
of Newark,

Respondent.

On Appeal

CONCLUSIONS  
and  
ORDER

-----  
Zucker, Goldberg & Weiss, Esqs., by Benjamin Weiss, Esq., Attorneys  
for Appellant  
William K. Walls, Esq., by Althea A. Lester, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants, holders of Plenary Retail Consumption License C-726 for premises 312 - 15th Avenue, Newark, were found guilty in disciplinary proceedings by respondent (Board) of permitting and suffering an act of violence on the licensed premises in violation of Rule 5 of State Regulation No. 20, on December 16, 1970, which resulted in a suspension of their license for twenty days, effective January 4, 1971.

Upon the filing of this appeal an order was entered by the Director on December 30, 1971, staying the Board's order of suspension pending determination of this appeal.

In their petition of appeal, appellants allege that the Board's findings were arbitrary and against the weight of the credible evidence; appellants were not the effective cause of the act upon which the charge was based and the penalty imposed was excessive.

The Board in its answer asserts that an employee of the licensees assaulted a patron on the licensed premises.

The appeal was presented upon the transcript of the proceedings below, supplemented by oral summation and exhibits at the hearing before me. Rules 6 and 8 of State Regulation No. 15.

Donald Tanner testified on behalf of the Board that he arrived at the licensed premises at approximately 9:30 p.m. on March 27, 1970. He ordered a drink from the bartender, subsequently identified as Willie Saunders. He then asked for a book of matches, whereupon Saunders became "nasty" and argumentative, threatened Tanner with a small revolver pointed at his face and ordered Tanner off the premises. As Tanner left, Saunders "dared" him to return. Tanner returned to the bar, whereupon Saunders broke a beer glass and inflicted a serious wound on Tanner's face and neck, requiring hospital treatment, confinement for four days and forty-four stitches on his neck.

On cross examination, Tanner testified that on the date in question, he worked late until 7:30 p.m., was driven from Hoboken to Newark by his employer; between 7:30 p.m. and 9:30 p.m. he had nothing alcoholic to drink; and he did not enter the package liquor store adjacent to the licensed premises. The alleged incident took place some time between 9:30 p.m. and 11:00 p.m. and he had not been loitering in front of the premises before entering.

Alonzo Williams, a local police officer, testified that in response to a call he arrived at the licensed premises at approximately 11:05 p.m. March 27, 1970, and found Tanner outside the licensed premises bleeding badly. He and his partner transported Tanner to the Martland Hospital.

On behalf of the licensees Willie Saunders testified that he has been employed as a bartender for fourteen years, and for his present employer for approximately one year.

On March 27, 1970, Tanner entered the tavern at approximately 10:00 p.m. He asked for a book of matches but he ordered no beer. Saunders was busy and said "I ain't got time. I will give it to you when I finish serving these people" to which Tanner responded "If you don't give them to me I am coming behind the bar to get them."

He next observed Tanner behind the bar near the location of the cash register, approximately twelve to fourteen feet from the bar. He pushed Tanner and ordered him out from behind the bar. Tanner returned to his position on the patrons side of the bar. Shortly thereafter he returned behind the bar to a position near the cash register. Saunders turned while holding a glass in his hand and as the parties engaged each other, Saunders attempted to push Tanner from behind the bar and noticed Tanner bleeding as he did so. He asserted that he did not purposely break the glass; that the incident was an accident; and he did not at any time during the incident have a gun.

On cross examination he denied daring Tanner to come behind the bar. He admitted that there is a small gun on the premises, that it is owned by Mr. Schwartz, but he had no idea where it was kept.

Dolores Christian testified that, on the night in question, she saw Tanner go behind the bar on two occasions and she saw Saunders push him out. She saw no gun, nor did she see the cutting incident.

Bernard Gottlieb testified that he is Tanner's employer. On March 27, 1970, Tanner did not work later than 4:30 p.m.; he drove Tanner to a bus stop in Jersey City at 4:30 p.m. and the trip to the bus stop took approximately seven minutes.

On cross examination he admitted that he has driven Tanner from work to the licensed premises many times. He added that Tanner is still in his employ, and is a good, conscientious worker.

Perry Baker testified that he was employed in the adjacent liquor store on March 27, 1970. Tanner entered the store at approximately 7:30 p.m. and purchased a half-pint of gin. He returned three or four more times before closing and purchased an additional half-pint of gin each time. He appeared to be intoxicated when he first came in.

On cross examination he testified that Tanner entered alone. There was a smell of alcoholic beverages about him and that he saw the incident which resulted in the injury to Tanner. He explained

that he had entered the tavern to make a phone call. While there, he observed Tanner and Saunders behind the bar on two occasions. He then observed what appeared to be an argument; he saw Saunders attempt to push Tanner from behind the bar and he next observed Tanner "standing there bleeding."

Lucius Harris testified that he arrived at the licensed premises approximately 9:30 p.m. and found Tanner standing outside on the sidewalk. Tanner had a half-pint of gin which he showed to Harris. Harris then entered the package store and purchased another half-pint which both men consumed. Thereafter, they entered the tavern, Harris ordered a drink, heard Tanner and the bartender Saunders, in conversation regarding a book of matches and then saw Tanner go behind the bar. Saunders admonished Tanner not to do so, as did Harris. Tanner returned to the patron's side, but shortly thereafter again proceeded behind the bar, at which time he was allegedly struck and injured.

On cross examination he testified that he had consumed one half-pint of gin earlier in the evening; he did not see Tanner enter the liquor store that evening; Saunders had a glass in his left hand when he turned to confront Tanner; he did not see the glass break nor did he see the glass come in contact with Tanner's face.

Harry Schwartz, co-licensee, testified that he was on the premises at the time of the incident but did not actually witness it. He acknowledged that he has two guns on the premises, properly licensed, but he had instructed his employees not to use them.

Brenda Richardson testified that she first saw Tanner on March 27, 1970 at approximately 7:30 p.m. They shopped together until 10:00 p.m. and returned to the licensed premises shortly thereafter. Tanner entered the licensed premises and she again saw him shortly after 11:00 p.m.

On cross examination she testified that she had recently had an argument with Schwartz and he had ordered her not to return to the premises.

At an informal hearing in this matter heard before the Board on September 30, 1970, the Board sought to determine whether sufficient evidence existed to bring formal charges against the licensees. Tanner, under oath, testified that he entered the premises between 10:30 and 11:00 p.m. on the evening of March 27, 1970; he had nothing to drink prior thereto; he was served a glass of beer and then attempted to go behind the bar for a book of matches, whereupon the bartender, Saunders stopped him at gun point. He then sought to return to his seat, Saunders dared him to return; he did so and Saunders inflicted the wound. He stated that twenty-eight stitches were necessary to close the wound.

On cross examination at that hearing he testified that while he works regularly until 4:30 p.m. in Hoboken, he had worked late on March 27, 1970, arrived in Newark an hour later and entered the licensed premises between 9:30 p.m. and 10:00 p.m. He met no one on the street earlier; he recognized no patrons; he was served a drink; and the injury occurred at the side of the bar, Saunders was washing glasses at the time and had a glass in his hand when he confronted Tanner.

I will not attempt to reconcile the maze of contradictory statements on the record at the hearing below. Indeed, the victim has contradicted himself on numerous occasions. It appears that Tanner did go behind the bar on two occasions in an attempt to obtain a book of matches. It also appears that no gun was pointed in his

direction. The record is replete with contradictory statements, making it virtually impossible to accurately ascertain the time of Tanner's arrival in the area, the time of entry into the premises, or the time at which the injury occurred.

One fact, however, is abundantly clear. A most serious wound was inflicted upon Tanner requiring hospitalization and many stitches to close the wound. If the version of the incident as related by Saunders is to be believed, the Board may well have questioned how the wound became inflicted on the face rather than in the abdomen. It may further have asked whether, considering the condition of Tanner, force was necessary, sufficient to inflict so serious a wound. Apparently the words "act of violence" as cited in Rule 5 of State Regulation No. 20, were added to cover a situation where a licensee or his agent uses excessive force or needless violence. Re Ross v. East Orange, Bulletin 1241, Item 2.

There is no justification, short of a acute need for self-defense in the face of unexpected and unprovoked attack for a licensee to resort to violence; and even then, the use of force should be restricted to that necessary to permit a strategic retreat for the purpose of calling the police. Rosewood Inn, Inc., Bulletin 1138, Item 4. See Jackson v. Newark, Bulletin 1600, Item 1.

In order to prevail on this appeal the appellants must sustain the burden of establishing that the action of the Board was clearly erroneous and against the logic and effect of the presented facts. Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511 (1947). The Director's function in matters of the kind now under consideration is not to reverse the determination of the local issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Febbi v. Paterson, Bulletin 1938, Item 5.

The ultimate test in these matters is reasonableness on the part of the Board, or to put it another way: could the members of the Board, as reasonable men, acting reasonably, have come to this determination based upon the credible evidence presented. Geiger v. Newark, Bulletin 1937, Item 2.

From my evaluation of the testimony, I conclude that the Board, which had the opportunity to observe the demeanor of the witnesses and weigh the credibility of their testimony, could reasonably have reached its determination as aforesaid.

It is, therefore, recommended that an order be entered affirming the Board's action, dismissing the appeal, vacating the order staying the Board's order of suspension and fixing the effective dates for the suspension of the license imposed by the Board.

#### Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by the appellant, pursuant to Rule 14 of State Regulation No. 15. No answer to said exceptions was filed by the Board herein.

I have fully analyzed and considered the exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record herein, including the transcripts of the testimony, the Hearer's report, and the exceptions to 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 25th day of May 1971,

ORDERED that the order dated December 30, 1970, staying the Board's order of suspension pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-726, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Max & Harry Schwartz, t/a Schwartz Tavern, for premises 312 - 15th Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Wednesday, June 9, 1971, and terminating at 2:00 a.m., Tuesday, June 29, 1971.

Richard C. McDonough  
Director

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

Alfred Jeter  
621 Communipaw Avenue  
Jersey City, N.J.

Holder of Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS  
and  
ORDER

-----  
Glickman and Valentine, Esqs., by Peter S. Valentine, Esq., Attorneys for Licensee  
Francis P. Meehan, Jr., 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 Sunday, October 25, 1970, at about 1:45 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., one pint bottle of Calvert Extra Whiskey and one pint bottle of Vincove Zig-Zag Wine, at retail, in their original containers for consumption off your licensed premises, and allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

Agent Ga testified that on Sunday, October 25, 1970, pursuant to a specific assignment, he proceeded to the licensed premises in the company of agents D and R and officers B and C of the Jersey City Police Department. Agent Ga entered the premises at approximately 1:40 p.m. in the company of officer B and they took seats at the bar. He noted that there were forty to forty-five black patrons present. The bartender later identified as Lewis Parmes, served both agent Ga and officer B.

Shortly thereafter they observed a female later identified as Mary Huntley enter the premises. She proceeded to the bar and at a position approximately five feet from agents Ga and officer B she ordered and was handed a pint bottle of Calvert Whiskey and some paper cups. She paid Parmes with a ten dollar bill and he returned six dollars in change.

Within a few moments agent Ga and officer B observed a male, later identified as James Nobles, approach the bar and ask Parmes for a bottle of Zig-Zag wine. The wine was delivered to Nobles, he handed Parmes a one-dollar bill and received twenty-five cents in change.

Thereafter, agent Ga and officer B followed Nobles out of the premises, confronted him and requested the bottle of wine. During this confrontation agent Ga signaled agents R and D and officer C, who confronted Miss Huntley then leaving the premises. Both Nobles and Miss Huntley admitted the purchases before agents Ga, R, D and local police officers B and C. Agent Ga and officer B returned with Nobles and Huntley to the premises and apprised Parmes of the violation.

The bottle of Calvert containing Miss Huntley's initials and the bottle of Zig-Zag wine were admitted into evidence.

On cross examination agent Ga testified that he and police officer B were seated approximately five feet from where the transactions occurred and that no search was made of either Miss Huntley or Nobles.

Agent R testified that he arrived at the scene with agents Ga, D and officers B and C at approximately 1:40 p.m. and assumed a post of observation with agent D and officer C, while agent Ga and officer B entered the premises. Shortly thereafter agent Ga and officer B exited the licensed premises following Nobles, whom they thereafter confronted.

Shortly thereafter, Miss Huntley exited the premises and agent Ga advised him that she had also made a purchase. He then confronted Miss Huntley who thereafter admitted the purchase and, at the request of agent R initialed the bottle of Calvert now in evidence. He testified that he witnessed the initialing by Miss Huntley. All five, officers and agents, re-entered the premises with Nobles and Huntley and confronted Parmes, advising him of the violation. Parmes made no reply.

Agent D corroborated the version given by agent R.

Alfred Jeter, licensee, testified that he was not present during the alleged violation but arrived shortly thereafter as the result of a call from Parmes. He explained that Parmes is presently out of the State and unavailable at the hearing herein.

Mary Huntley testified that she entered the licensed premises at approximately 1:30 p.m. with the bottle of Calvert already on her person and tucked in her belt underneath her coat. She insisted that she had entered the premises to purchase four cups of water and that upon paying Parmes for the water with a ten dollar bill, she was reminded by Parmes of an earlier debt of four dollars which he took out of the ten dollar bill, returning six dollars to her. At no time, did she remove the bottle from her belt but agent Ga reached inside her coat and removed it.

On cross examination she testified that she did not admit the purchase to the agents, nor was she asked whether she had made the purchase. Furthermore, agent Ga must have seen the bottle in her belt since her coat was open while she was on the premises.

John Jeter testified that he is the cousin of the licensee and was present when agent Ga and officer B arrived. He recognized officer B; he saw Miss Huntley order the paper cups of water from Parmes and pay him with a ten dollar bill. He did not see Miss Huntley purchase any whiskey and he did not see Nobles until he entered with the agents.

John Nesbitt testified that he was present during the incident and saw Huntley purchase the paper cups of water but did not see her purchase the liquor. He added that he knows Nobles, and did not see him until he entered with the agents.

This proceeding presents a purely factual question and pursuant thereto, I have set forth in detail the pertinent testimony presented by the witnesses.

We are dealing here with a purely disciplinary measure and its alleged infraction; such measures are civil in nature and not criminal. 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 in my mind 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. On the other hand, the testimony of the witnesses for the licensee as it pertains to the allegation does not have the ring of truth. I cannot accept the testimony that Miss Huntley entered the premises only to purchase four cups of water particularly since by her own testimony she paid only four dollars for a prior debt and received six dollars in change. Simple mathematics will therefore show that she paid nothing for the four cups of water. The testimony as to the purchase by Nobles stands uncontradicted.

A fair and impartial evaluation of the evidence clearly preponderates in favor of finding of guilt, which I, accordingly, recommend.

The licensee has no prior adjudicated record. I further recommend that the license be suspended for fifteen days. Re Ag-An Incorporated, Bulletin 1949, 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 and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Upon receipt of the Hearer's report the licensee made application for the imposition of a fine in lieu of suspension, if the said Hearer's report is adopted by the Director, in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$600.00 in lieu of the suspension.

Accordingly, it is, on this 25th day of May 1971,

ORDERED that the payment of a \$600.00 fine by the licensee is hereby accepted in lieu of a suspension of license for fifteen (15) days.

Richard C. McDonough  
Director

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

In the Matter of Disciplinary Proceedings against

Edna Ruth Walker  
t/a Do Drop Inn  
216 South Salem Street  
Randolph Township  
PO Dover, New Jersey

)  
)  
) CONCLUSIONS  
) AND ORDER  
)  
)

Holder of Plenary Retail Consumption License C-10 issued by the Township Council of the Township of Randolph.

-----  
Licensee, Pro Se.  
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 7, 1971 she possessed three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Crystal Bay Inn, Inc., Bulletin 1968, Item 3.

Accordingly, it is, on this 24th day of May, 1971,

ORDERED that Plenary Retail Consumption License C-10 issued by the Township Council of the Township of Randolph to Edna Ruth Walker, t/a Do Drop Inn, for premises 216 South Salem Street, Randolph Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Thursday, May 27, 1971 and terminating at 3 a.m. Friday, June 11, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

EANA, INCORPORATED )  
t/a Atlantic Liquors )  
629 Atlantic Avenue )  
Atlantic City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License D-19, issued by the Board of Commissioners of the City of Atlantic City. )

-----  
Licensee, Pro Se  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 5, 1971, it sold alcoholic beverages to a minor, age 18, in violation of Rule 1 of State Regulation No. 20..

Licensee has a previous record of suspension of license by local issuing authority for ten days for similar violation effective February 18, 1952.

The prior record for suspension for similar violation occurring more than 10 years ago disregarded, 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 Top Road Tavern, Bulletin 1941, Item 9.

Accordingly, it is, on this 25th day of May, 1971,

ORDERED that Plenary Retail Consumption License D-19 issued by the Board of Commissioners of the City of Atlantic City to Eana, Incorporated, t/a Atlantic Liquors for premises 629 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days commencing at 7:00 A.M. Tuesday, June 8, 1971, and terminating at 7:00 A.M. Friday, June 18, 1971.

Richard C. McDonough  
Director

6. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #335 )  
 Re: The Lifting of the Automatic )  
 Suspension of Plenary Retail Con- )  
 sumption License C-21, issued by )  
 the City Council of the City of )  
 Asbury Park to )  
 )  
 Patrick Ryan )  
 t/a Paddy's Bar )  
 326 Cookman Avenue )  
 Asbury Park, N.J. )

ORDER

-----  
Licensee, by Patrick Ryan, Pro Se

BY THE DIRECTOR:

It appears from the records of this Division that on May 12, 1971 the licensee herein was fined \$15 in the Asbury Park Municipal Court, after pleading guilty to a charge of sale of alcoholic beverages to a minor on April 30, 1971, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license held by the above named licensee for the balance of its term. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the Director against the licensee because of said sale of alcoholic beverages to a minor. A petition may be filed with me by the licensee after such disciplinary proceedings have been concluded. In fairness to the licensee, I conclude, that at this time, the effect of the automatic suspension should be temporarily stayed. Re: Calvacca, Bulletin 1968, Item 5.

Accordingly, it is, on this 26th day of May 1971,

ORDERED that the aforesaid automatic suspension of Plenary Retail Consumption License C-21 be and the same is hereby stayed pending the entry of a further order herein.

Richard C. McDonough  
Director

7. 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  
 ANNA KOVALICKY  
 t/a Kovalicky's Tavern  
 52 First Street  
 Passaic, N. J.  
 Holder of Plenary Retail Consumption License C-54, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.

CONCLUSIONS AND ORDER

-----  
 Licensee, Pro Se.  
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, February 20, 1971, she sold one pint bottle of gin 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 Prince Bar & Grill, Bulletin 1957, Item 4.

Accordingly, it is, on this 25th day of May, 1971,

ORDERED that Plenary Retail Consumption License C-54 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Anna Kovalicky, t/a Kovalicky's Tavern for premises 52 First Street, Passaic be and the same is hereby suspended for ten (10) days commencing at 3:00 A.M. Tuesday, June 8, 1971 and terminating at 3:00 A.M. Friday, June 18, 1971.

Richard C. McDonough  
Director

