

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

BULLETIN 1823

October 28, 1968

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

BULLETIN 1823

October 28, 1968

1. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE
SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary)
Proceedings against)

C & C RESTAURANT & BAR (CORP.))
t/a C & C Restaurant & Bar)
5525 Palisade Avenue)
West New York, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-74, issued by the Board of)
Commissioners of the Town of West)
New York.)

- - - - -)

Max & Koenig, Esqs., by Jacob E. Max, Esq., Attorneys for)
Licensee)
Louis F. Treole, Esq., Appearing for Division of Alcoholic)
Beverage Control)

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

- "1. On February 20, 28, March 4, 7, 13, 22 and 25, 1968, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game', and also on April 4, 1968, you allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memorandum and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.
- "2. On February 20, 28, March 4, 7, 13, 22 and 25, 1968, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises, and also on April 4, 1968, you allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Nicholas Roon, a New Jersey State Police officer, with extensive experience in the investigation of gambling operations involving bookmaking and numbers bets, visited the above licensed premises pursuant to a specific assignment to investigate alleged bookmaking and numbers bets activities therein. He gave the following account: His first visit to these premises was made on February 20, 1968, at approximately 12:45 p.m. On this occasion he seated himself at the bar and noted that a bartender called Max (later identified as Charlie McEldowney) was serving about ten or

twelve patrons in the immediate area of the bar. At about 1 p.m. he saw a male known as Ted (later identified as Edward J. Quinn) emerge from the back room. Ted was approached by an unknown male, and they engaged in a conversation relating to numbers bets. The unknown male placed a numbers bet with him by saying "I want 714" and "ninety and ten." The unknown male had asked Ted what the number was and Ted replied "737." He observed Ted take out a black covered loose-leaf pad from his pocket, write a number on one of the inside pages and accept a dollar from the better, whereupon he put the pad back into his rear pocket and the money into his front pants pocket.

This investigator returned to the premises on February 28, 1968, at approximately 1 p.m. Max was tending bar at that time and Ted was seated at the bar. At approximately 1:25 p.m. this witness went to the men's room and then, upon returning to the bar, seated himself next to an unknown male. This male called Ted to his position at the bar and placed a numbers bet with him. The witness observed Ted take a black pad out of his pocket and write the bet which was given to him in a loud voice by this unknown male, "701 straight and 801 straight, a buck on each." The unknown male gave Ted two one-dollar bills which Ted placed in his right front pants pocket and then, upon making notations on the pad, returned the said pad to his right rear pocket. The conversation was loud and could be heard by the bartender who was within ten feet of this transaction and serving drinks to some other patrons.

This witness returned to these premises on March 4, 1968, at 12:45 p.m., seating himself at the bar tended by Max. At this time there were approximately five patrons at the bar. He observed Ted sitting at the bar reading a newspaper and, at about 12:50 p.m., a male, known as Harry, entered the premises and seated himself at the immediate right of this witness. Addressing himself to Ted, Harry said, "104 and 204, twenty-five cents straight on each." Ted picked up two quarters which were on the bar in front of Harry and made a notation on a pad which he had taken from his rear pocket. The transaction was made in a loud tone, "a little bit louder than we are speaking right now." Max was approximately three feet from Harry when this transaction took place. The witness identified this transaction as a "two number bet that was placed, 104 and 204 for twenty-five cents straight."

Returning to the premises on March 7, 1968, at approximately 1:20 p.m., he observed Ted was now tending bar. On this occasion, when the investigator entered the bar, Max (the heretofore identified bartender) was getting his coat and left the premises at approximately ten minutes after Noon entered. The witness ordered a drink from Ted and, while consuming the same, an unknown male entered the premises, engaged in a conversation with Ted with reference to numbers that had come out in the past, and then said, "Give me 485 for \$2.50." Ted asked this unknown male, "Do you want to put \$2 straight and fifty cents in the box" to which the male replied, "No. Give me two fifty straight on 485." Ted then made a notation in a black covered notebook which he then put back into his rear pocket and picked up the money from the bar, placed the same in his left front pocket.

Again, on March 13, 1968, at 12:10 p.m., the investigator returned to these premises, sat at the bar and observed that Max was serving as bartender. At 12:30 p.m. Ted entered the tavern. At approximately two minutes later, Max handed Ted a small three-

by-five slip of white paper. Ted asked, "That's a fifty cent combo on 602?" The witness explained that this was a combination bet on number 602 for \$3 total bet. He was seated just about one stool from Ted, or approximately two feet away, when Max handed the slip of paper to Ted.

On March 22, 1968, at approximately 1:15 p.m., this investigator re-entered the tavern, seated himself at the bar and observed that Max was engaged in his usual bartender duties, and Ted was seated at the bar. At about 1:40 p.m. an unknown male and female were discussing what numbers they wanted to play and, after a short while, the male shouted as Ted approached him, "851 and 152, fifty cents straight on each." Ted wrote some numbers on a black covered pad which he had taken from his pocket and then took a dollar from this male. At approximately 1:49 p.m. another unknown male handed Ted a slip of paper and, in a loud voice, said "A quarter straight on each." Ted received two coins from this male in payment for the bet. Roon was seated right next to the betters and the bartender was standing behind the bar directly opposite them. Their voices were quite loud so that, in the opinion of the witness, anyone in the immediate vicinity, including the bartender, could not fail to hear these conversations relating to the transactions.

The final visit made by this investigator to these premises was on March 25, 1968, at approximately 1:20 p.m. Upon seating himself at the bar he noted that Ted was sitting at the bar, and another bartender (known as Phil) was on duty at that time. At approximately 1:30 p.m. a male (called Jim) entered the premises and engaged in a conversation with Ted. Jim handed a folded slip of paper, together with two dollar bills, to Ted with the comment "I hope I hit." Replied Ted, "You know if you win so do I." Jim left the premises without being served or making any purchases. Ted put the slip and money in his pocket. This investigator then departed.

Finally, this witness testified that, in all of the betting activities that he observed on these premises, none was done furtively or surreptitiously, but were negotiated in an open manner. He also noted that at no time during his visits to these premises did he ever see Ted order or consume anything. He identified Phil as Philip Keeting, the principal officer of the corporate licensee, whom he had seen on prior occasions in these premises usually engaged in making sandwiches. These sandwiches were made in the open rear portion of the licensed premises, and they were served by Phil to patrons at the bar. On cross examination this investigator identified Phil who was in attendance in the hearing room.

Stanley Prusek, a detective-sergeant of the New Jersey State Police for the past fifteen years, testified that he obtained a search warrant from the New Jersey Superior Court which described the person known as Ted at the subject premises. Fortified with the said warrant, he, in the company of other police officers, entered the premises on April 4, 1968, at approximately 12:55 p.m., confronted Ted, who readily identified himself, and apprized him of the warrant and its contents. A search of Ted revealed the black pad and Ted freely admitted that a slip taken from his wallet was a tally sheet of his week's "take." He also admitted that the notations in the black book reflected the numbers bets that he had taken during the past week. On the basis of this witness' background and experience in bookmaking and numbers bets investigations, he concluded that these were numbers that

were used in a lottery operation; the amounts of bets were designated alongside of three-digit numbers. A search of the premises did not reveal any other betting paraphernalia or slips.

Philip Keeting, president of the corporate licensee herein, testifying in its defense of these charges, gave the following account: He is in daily attendance at these premises, working from 8:30 in the morning until seven at night, and frequently until 11 or 12 p.m. He cooks and makes sandwiches at lunch and at other times and occasionally tends bar. Max, whom he identified as Charlie McEldowney, his seventy-five-year old uncle, is employed as a bartender and was so employed on the dates herein charged. He denied that Ted ever was employed in any capacity at these premises but merely frequents his tavern as a patron. He categorically denied seeing any numbers bets activities on these premises and "If I had seen it I would have chased them out." The first he knew about Ted was when he was apprehended by the police.

On cross examination he admitted seeing Investigator Roon on several occasions in the premises but couldn't remember the specific dates. He did, however, acknowledge that Ted frequented his tavern "maybe every day, every other day", usually around lunch hour. He added that he could not hear any conversation that took place in the barroom because the juke box made these premises a pretty noisy place.

Max was not produced as a witness at this hearing.

In the determination of this matter, which presents a sharp factual conflict in the testimony presented herein, we are guided by the well established principle that these proceedings are disciplinary and civil in nature and not criminal (Kravis v. Hock, 137 N.J.L. 252) and require proof by a preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373, 378 (1956); Freud and Pittala v. Davis, etc., 64 N.J. Super. 242 (App. Div. 1960).

In evaluating the testimony the Hearer must credit as much or as little as he finds reliable. 7 Wigmore, Evidence, sec. 2100 (3rd Ed. 1940); Greenleaf, Evidence, sec. 201. Evidence to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546. And the finding must be based on competent legal evidence and grounded upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. sec. 1042, and the cases therein cited.

I have had an opportunity to observe the demeanor of the witnesses as they testified, and my analysis and assessment of the testimony presented lead me to the unmistakable conviction that the truth lies in the version given by the Division's witnesses. I find that their account of the activities on the dates in question is a credible, factual and true version. It must be remembered that these officers, with long experience in investigation of bookmaking and numbers bets, conducted this investigation pursuant to specific assignment. There has been no suggestion, nor could it be validly asserted under the facts herein, that they were improperly motivated or influenced or that there was any dark conspiracy to inculcate the licensee.

Hears
evidence
is
not
credible
about

On the other hand, the testimony of the licensee's witnesses is at war with common experience and the probabilities in the circumstances. It seems highly unlikely, and indeed unbelievable, that Keeting (who was on the premises every day serving food, and drink on occasion, to patrons therein) would not have noticed the overt and uninhibited betting transactions in which Ted, and on occasion the bartender Max, were engaged. The fact is that these betting activities did take place on the premises and Keeting admits that he found out, after Ted was arrested, that Ted was picking up bets and had evidence of such bets on his person.

The testimony is also clear that Ted never made any purchases of alcoholic beverages or food during the visits of the Division's witnesses, and on at least one occasion was engaged as a bartender. These facts certainly would reasonably indicate that this man was on the premises for some purpose other than as a patron.

What is particularly significant, however, and speaks with bell-like clarity, is the failure of the licensee to produce Max the bartender. Keeting says that he did not produce his uncle because he is seventy-five years of age and he didn't want to "excite him or bring him along." However, he admits that he is still employed and presently engaged in the same bartender duties; nor has he suggested any infirmity which would excuse his presence at this hearing.

The general principle in these matters is that, in the absence of a valid explanation, the failure to call a witness may create an adverse inference against such party where the witness is available subject to the party's control, and where the witness whom the party fails to call is one whom the party would naturally be expected to call. Such presumption or inference is warranted particularly where the witness is a relative or is an employee within its control, possesses special knowledge concerning facts essential to a party's defense, and thus it would be natural to expect him to be called. See Schultz v. Hinz, 20 N.J. Super. 346; Wild v. Roman, 91 N.J. Super. 410 (1966). Thus in this case, where the bartender, a relative of the president of the corporate licensee, was present on most of the dates contained in the charges herein and is presently employed by the licensee, his absence as a witness permits the inference that his testimony would have been unfavorable to the licensee. Burney v. Washington Nat'l Ins. Co., 68 N.J. Super. 373, 379; 2 Wigmore, Evidence (3rd Ed. 1940), Failure to Produce Evidence, secs. 289-290; 31A C.J.S. Evidence, sec. 156(3), and cases therein cited.

I am persuaded that the licensee allowed, permitted and suffered gambling in and upon its licensed premises, that is, the making and accepting of numbers bets on February 20, 28, March 4, 7, 13, 22 and 25, 1968. The licensee is, of course, fully responsible for the activities of its employees during their employment on licensed premises. Kravis v. Hock, *supra*; In Re Schneider, 12 N.J. Super. 449; Rule 33 of State Regulation No. 20. The activity and the knowledge of the bartender become the knowledge and responsibility of the licensee.

However, with respect to the charge alleging that the licensee allowed, permitted and suffered such slips, tickets and participation rights pertaining to the aforementioned gambling activity on its licensed premises on April 4, 1968, I do not believe that this charge has been adequately established. It will be recalled that the only testimony with respect thereto is to the effect that a search of Ted on that date revealed betting paraphernalia on his person. No such paraphernalia or betting slips

were found elsewhere on the premises. There is no proof that Ted took any bets on that date in the premises or that the licensee's agents or employees knew that he possessed on that date any numbers slips. While Ted's prior activities in the licensed premises may raise a suspicion and, indeed, inference, I believe that the licensee should be given the benefit of the doubt in the absence of persuasive affirmative evidence. I therefore find that, in this factual complex, there has not adequately generated sufficient proof of the said charge relating to April 4, 1968.

After carefully considering and evaluating all the testimony herein, I conclude that the licensee allowed, permitted and suffered gambling on the licensed premises on the dates charged, i.e., the making and accepting of bets in a lottery, and that it permitted and suffered tickets and participation rights in a lottery, commonly known as the numbers game, in and upon the licensed premises, as charged, in violation of Rules 6 and 7 of State Regulation No. 20.

Thus I conclude that the Division has established the truth of those charges as to all dates, with the exceptions of so much of the charge relating to April 4, 1968, by a fair preponderance of the believable evidence, and recommend that it be found guilty of these charges.

Licensee has no prior adjudicated record of suspension of license. It is further recommended that the license be suspended for sixty days. Re Krone, Bulletin 1806, Item 11.

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, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 23rd of September 1968,

ORDERED that Plenary Retail Consumption License C-74, issued by the Board of Commissioners of the Town of West New York to C & C Restaurant & Bar (Corp.), t/a C & C Restaurant & Bar, for premises 5525 Palisade Avenue, West New York, be and the same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, September 30, 1968, and terminating at 3 a.m. Friday, November 29, 1968.

JOSEPH M. KEEGAN
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

ANN SAMRA)
t/a Samra's Tavern)
470 McBride Avenue)
Paterson, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-163 issued by the Board of Alcoholic Beverage Control for the City of Paterson.)
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Walter J. Tencza, Esq. Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On February 29, March 1, 4, 5 and 7, 1968, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The Division offered the testimony of several ABC agents in substantiation of the charge.

Agent R (who possessed ample experience in gambling investigations, including horse race betting) gave the following account: Pursuant to specific assignment to investigate gambling activity in the licensed premises, and accompanied by Agents S, G and Ga, he visited the licensed premises (which he characterized as having the general appearance of a neighborhood tavern) for the first time on February 29, 1968, at approximately 11:45 a.m. and sat at the bar. A male, identified as Joseph Cheff, was tending bar. When R was requested to detail what conversation he had with Cheff, he replied:

"We spoke about horse betting, and I said, 'I like a horse Jolly Joan, the 5th race at Hialeah.' I asked Joe if he could get it in for me. Joe asked us, 'What have you got?' I said, 'Jolly Joan, the 5th race in Hialeah. I want to bet \$2, \$2 and \$2.' Joe went to the telephone, he made a telephone call, and he returned to our position at the bar. I asked him, 'Is the bet in?' He said, 'Yes. You bet \$2, \$2, and \$2. That is \$6.' At that time I paid Mr. Cheff \$6 for the horse bet."

The agent described the transaction as "a horse bet \$2 to win, \$2 to place, and \$2 to show."

Upon leaving the tavern at approximately 1:30 p.m., R said to Cheff, "I'll see you tomorrow and collect the bet." Cheff said, "O.K., I'll see you tomorrow."

On March 1 accompanied by Division Agents S and Ga, R entered the licensed premises at 11:00 a.m. Cheff, who was tending bar, apprised the agent that Jolly Joan ran third and paid \$9. Cheff then placed \$9 on the bar in front of R. R told Cheff that he "wanted to bet Up and At Him, a horse running in the 5th race at Hialeah, and I told him I wanted to bet \$5 to win, \$2 to place, and \$2 to show, a total of \$9." Cheff replied that he would call in the bet and went to the telephone booth. Upon his return from the telephone booth, Cheff said, "O.K., the bet is in. You wanted Up and At him, \$5, \$2, and \$2; is that so?" Cheff took the nine dollars lying on the bar.

R returned to the tavern with Ga on March 4 at 12:20 p.m. and sat at the bar. Cheff informed R that "the horse Up and At Him ran second and paid \$9.40 for second and \$6.60 for third, giving me a total of \$16 for the bet." He then paid R \$16. R requested Cheff to call the bookie and ask what the odds were on Fiddler's Green, a horse running in the fifth race at Gulfstream. Ga and R followed Cheff to the telephone booth. R observed Cheff dial a number and heard the following conversation:

"Hello, Jim! This is Joe at Samra's. What are the odds on Fiddler's Green running in the 5th at Gulfstream?' Joe turned to me and he says, 'He is 12 to 1.' I said, 'O.K., put \$4 to win, \$4 to place, and \$4 to show on him.' Joe repeated this into the telephone. He said, '4 across the board on Fiddler's Green in the 5th at Gulfstream.'"

Thereafter, R handed Cheff the sum of \$12.

R returned to the tavern with Ga on March 5 at 10:30 a.m. The agents positioned themselves at the bar. Cheff, who was tending bar, walked up to the agents and said to R, "Here is your \$26. Fiddler's Green ran second and paid \$9 and \$4." R then asked Cheff to find out the odds on Full of Prunes, a horse entered in the fourth race at Bowie race track. Cheff went to the telephone booth followed by R and Ga. R entered the telephone booth with Cheff. The testimony revealed the following:

"Q Tell us what you heard Mr. Cheff say.

A I heard Mr. Cheff say, 'Hello, George! This is Joe from Samra's. What are the odds on Full of Prunes in the 4th at Bowie?' Mr. Cheff said to me, 'He is 6 to 1.' I then said to Mr. Cheff, 'Put \$5 to win, \$5 to place and \$5 to show on Full of Prunes.'

Q What was the total amount of the bet?

A Fifteen dollars.

Q When you said that to Mr. Cheff did you hear what he said?

A Yes, sir. He spoke into the telephone and said, 'Five dollars across the board on Full of Prunes.'"

After leaving the telephone booth, R handed Cheff \$15. Cheff pocketed the money.

On March 7 R entered the licensed premises with S and Ga. G waited outside with a local police officer. R had on his person four "marked" five dollar bills and a slip of paper "bearing three horse bets on it." Cheff was again tending bar. Cheff approached the agents who had positioned themselves at the bar and handed the sum of \$26 to R which represented the winnings on the horse bet of March 5 on Full of Prunes.

After the agents were served a drink, R informed Cheff that he wanted to place three horse race bets. Cheff replied, "Come with me to the telephone. I want you to read the horses off to me." Cheff entered the telephone booth and R placed himself in the door of the booth. Ga placed himself in the area, approximately three feet distant. Cheff dialed a number and said, "Hello, George! This is Joe at Samra's. Here is what I got for you." As R called off the horse bets, Cheff repeated the bets into the telephone receiver. After Cheff left the telephone booth, he informed R that the bets amounted to \$15. R handed Cheff three of the marked five dollar bills. Cheff put the money in his pants pocket.

Ga and S left the tavern and thereafter S reentered the licensed premises accompanied by Division Agents G and Ru and a local police officer. The latter served Cheff with an arrest warrant.

On cross examination, the agent testified that he did not see the licensee, Ann Samra, or her husband, Samuel Samra, in the tavern on any of his visits. He did not observe Cheff engage in betting activity with any person other than himself.

Agent Ga's testimony was corroborative of the testimony offered by R.

S corroborated the testimony given by R relative to the occurrences of February 29 and March 1. On March 7 he accompanied R and Ga in entering the licensed premises. He observed Cheff hand R the sum of \$26 and heard Cheff say to R, "Here is \$26 you have coming back on Full of Prunes you bet the other day." Thereafter, R told Cheff he wanted to place horse bets on that day. Cheff requested R to go to the telephone with him and read off the bets. S remained seated at the bar while Cheff, R and Ga went to the telephone booth. He heard a male (approximately ten feet distant from R) call out to Cheff, "Don't hang up. I want to get 732 in."

On cross examination, the agent admitted that he did not see Cheff accept bets from any person other than R.

Agent G testified that on March 7 he was present when the local police officer read the arrest warrant to Cheff and observed Cheff empty the contents of his pockets onto a pool table. The three marked five dollar bills given by R to Cheff were found among the money on Cheff's person. Cheff admitted that he received the marked money from R and that he called in a bet as a favor to R.

Joseph Cheff, called as a witness by the licensee, refused to answer any questions on the ground that the answers might tend to incriminate him.

The licensee, Ann Samra, testified that Cheff had been employed by her as a part time bartender from the latter part of

1967 to March 7, 1968, when his services were terminated. She was not aware, nor had she any knowledge that her bartender, Cheff, had taken or placed bets in the tavern. She saw no physical evidence to indicate that betting had taken place in the tavern.

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

The testimony elicited from the agents, depicting the horse race betting engaged in by Cheff in the licensed premises with Agent R on each of the dates mentioned in the charge, was explicit, clear, overwhelming and undisputed.

The defense offered by the licensee that she had no knowledge of her bartender's participation in activities proscribed by the rules and regulations must fail for it is a fundamental principle that a licensee is responsible for the misconduct of persons employed and fully responsible for their activities during their employment on licensed premises. In re Olympic, Inc., 49 N.J. Super. 299; In re Schneider, 12 N.J. Super 449; Rule 33 of State Regulation No. 20. Furthermore, the responsibility of the licensee does not depend upon his personal knowledge or participation. In fact, it has been held that a licensee is not relieved even if the employee violates his explicit instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App. Div. 1951); F. & A. Distrib. Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34 (1961).

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charge herein.

Licensee has a previous record of suspension of license (in partnership with Florence Darder, t/a S & D Bar & Grill, for premises 499 McBride Avenue, West Paterson) by the Commissioner for ten days effective June 3, 1946, for employing a criminally disqualified person. Re Samra and Darder, Bulletin 713, Item 5. It is recommended that the prior record of suspension of license for dissimilar violation be disregarded because occurring more than five years ago, and it is further recommended that the license be suspended for sixty days. Re Anisko, Bulletin 1797, Item 12.

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.

Accordingly, it is, on this 23rd day of September 1968,

ORDERED that Plenary Retail Consumption License C-163, issued by the Board of Alcoholic Beverage Control for the City of

Paterson to Ann Samra, t/a Samra's Tavern, for premises 470 McBride Avenue, Paterson, be and the same is hereby suspended for sixty (60) days, commencing at 3 a.m. Monday, September 30, 1968, and terminating at 3 a.m. Friday, November 29, 1968.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

ROMAN INN, INC.)
t/a Roman Inn-Lake Vu Tavern)
Church Lane, Box 366)
North Brunswick, New Jersey)

Holder of Plenary Retail Consumption License C-4 issued by the Township Committee of the Township of North Brunswick)

CONCLUSIONS
and
ORDER

Offer 1850

-----)
William F. McCloskey, Jr., Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On June 15, 1968, 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., Joseph S. ---, age 16; in violation of Rule 1 of State Regulation No. 20."

Joseph ---, age 16, testified that at about 8:30 on Saturday night, June 15, 1968, a car driven by Henry ---, in which he and three other youths were occupants, drove to the licensee's premises; that he entered the side door of the said premises and purchased "two six packs of 16-ounce cans of Budweiser, two six packs of Budweiser 12-ounce, two six packs of Schaefer 12-ounce party bottles and then a half a case of 7-ounce bottles of Rolling Rock beer"; that he took the beer from the cooler and brought it to the bar; that although there were two persons tending bar, he could not recall who waited on him; that after paying about \$11 for the beer, he placed it in the trunk of the car; and that he was not questioned by anyone concerning his age.

On cross examination, Joseph said that on previous occasions when he visited the licensed premises, he saw Roman Starozytnyk and Seweryn Starozytnyk (officers of the corporate licensee) but did not remember either of them being present on the night in question.

John --- testified that on the evening of June 15 he was in the car driven by Henry, with Joseph and Henry's brother Robert; that after parking the car in the driveway of the licensee's establishment, Henry got out of the car and opened the trunk while Joseph went into the licensed premises; that about five minutes thereafter, Joseph placed packages in the trunk of the car which he (John) learned contained beer; and that the car was driven to a friend's house where a party was in progress.

It was stipulated by counsel for the respective parties that if called to testify, the direct testimony of Henry and Robert would be that the car was driven to the vicinity of the licensed premises and that Joseph left the car empty-handed and, after a length of time, returned to the car as described by him.

The licensee's attorney cross-examined Henry concerning the information which Henry allegedly gave to the local police on June 16. At that time, Henry stated, he at first denied knowledge of the incident but later told an officer where the beer had been purchased and by whom.

ABC Agent D testified that on June 20 he interviewed Joseph at his home and thereafter Joseph directed the agent and a fellow agent to the licensee's premises; that both brothers, Roman and Seweryn Starozytnyk, were there; that Joseph was unable to identify either as the person who made the alleged sale of beer; that Seweryn Starozytnyk said he was the only person on duty at the time in question; that both brothers denied they had ever previously seen Joseph in the premises; that upon checking the cooler, Agent D said it contained, among other brands, the brands of beer which Joseph stated he had purchased on June 15.

Seweryn Starozytnyk testified that he is secretary-treasurer of the licensee corporation and was the sole person on duty during the evening of June 15 from 5:00 p.m. until closing time; that he did not see Joseph in the premises that night or at any time previous thereto; that he keeps a daily inventory of the malt beverages sold for off-premises consumption; that the June 15 inventory contained no record of sale of 16-ounce cans of Budweiser beer which Joseph claimed he purchased on that date.

Roman Starozytnyk testified that he was not in the premises from 5:00 p.m. until 9:45 p.m. on June 15 as he attended a wedding that day.

Although George Farr testified that on June 15 he was in the licensee's premises from 4:30 until 9:30 p.m., Edward McClusky that he was there between 5:00 and 9:30 p.m. and Paul Rood that he was present from 6:00 to 9:00 p.m., all stated they did not see Joseph in the licensee's premises.

It has long been established that failure to identify the person making a sale of alcoholic beverages to a minor is not fatal in disciplinary proceedings, providing it is established that the minor purchased alcoholic beverages on the licensed premises. Ott's Incorporated v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1444, Item 1.

In determining a matter such as that now under consideration, we are guided by the principle that disciplinary proceedings against liquor licensees are civil in nature and require proof only by a preponderance of the believable evidence. 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); Howard Tavern, Inc. v. Div. of Alcoholic Beverage Control (App. Div. 1962), not officially reported, reprinted in Bulletin 1491, Item 1.

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

I have had the opportunity to observe the demeanor of the witnesses when they testified and have carefully analyzed and evaluated their testimony. On behalf of the licensee, there is no dispute that the particular brands of beer which the minor allegedly purchased are sold at its establishment. The testimony of Joseph, who stated that he had purchased the beer at the licensee's place of business, appears truthful in every respect. He described his obtaining the beer from the cooler and bringing it to the bar. There appears to be no dispute that the method he used in obtaining the beer has been in use in the licensee's establishment.

The witnesses produced on behalf of the licensee merely gave negative testimony to the effect that they had not seen Joseph in the establishment on the evening in question. The corporate officers both stated they had never seen Joseph in the licensed premises at any time before he appeared with an ABC agent. However, during cross examination by the licensee's attorney, Joseph said that he had been in the licensed premises on previous occasions and he recognized Roman and Seweryn Starozytnyk as being in the premises on occasion.

John testified that at the time in question he was an occupant with Joseph and others in the car driven to and parked in the driveway of the licensee's premises. In addition, the substance of the stipulation by the parties to the effect that the testimony of Henry and Robert that the car was driven to and parked in the vicinity of the licensee's premises and that Joseph left the car empty-handed and returned to it with beer, describes what occurred on June 15, 1968.

After careful consideration of all the evidence, I am satisfied and find as a fact that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charge.

Licensee has no previous adjudicated record. It is further recommended that its license be suspended for twenty-five days. Re Tom Russell, Inc., Bulletin 1784, Item 7.

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 transcript of testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 23d day of September, 1968,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of North Brunswick to Roman Inn, Inc., t/a Roman Inn-Lake Vu Tavern, for premises on Church Lane, North Brunswick, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, September 30, 1968, and terminating at 2:00 a.m. Friday, October 25, 1968.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JACK HARRIS)
t/a Jack's Bar & Restaurant)
357½ - 359 West Side Avenue)
Jersey City, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-214, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)
- - - - -)

Friedland, Schneider & Friedland, Esqs., by David Friedland, Esq.,
Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, April 21, 1968, he (1) sold a pint bottle of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) hindered investigation by offering a money bribe to Division agents then conducting the investigation, in violation of Rule 35 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Commissioner for twenty-five days effective February 24, 1947, for possession of alcoholic beverages not truly labeled, and by the Director for ten days effective September 25, 1961, for sale in violation of State Regulation No. 38, for twenty-five days effective April 16, 1962, for possession of alcoholic beverages not truly labeled, and for twenty days effective May 16, 1967, for sale in violation of State Regulation No. 38. Re Harris, Bulletin 745, Item 9; Bulletin 749, Item 2; Bulletin 1418, Item 5; Bulletin 1449, Item 2; Bulletin 1739, Item 6.

The prior record of suspensions of license for dissimilar violations in 1947 and 1962 occurring more than five years ago disregarded, but considering the record of suspension for similar violation in 1967 within the past five years and in 1961 more than five but less than ten years ago, the license will be suspended on the first charge for thirty-five days (Re Scangarello, Bulletin 1751, Item 13) and on the second charge for thirty days (Re F & A Corp., Bulletin 1757, Item 1), or a total of sixty-five days, with

remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 23d day of September, 1968,

ORDERED that Plenary Retail Consumption License C-214, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Jack Harris, t/a Jack's Bar & Restaurant, for premises 357½-359 West Side Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, September 30, 1968, and terminating at 2:00 a.m. Friday, November 29, 1968;

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.

In the Matter of Disciplinary Proceedings against

EUNICE SAPORITO
281-283 Scotland Road
Orange, New Jersey

SUPPLEMENTAL
ORDER

Holder of Plenary Retail Consumption License C-54 issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange

Citrino, Carella, Balsam & Crochelt, Esqs., by Charles C. Carella, Esq., Attorneys for Licensee Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

On August 19, 1968, I entered Conclusions and Order herein suspending the license for sixty days for permitting acceptance of numbers bets on the licensed premises. Re Saporito, Bulletin 1816, Item 3.

Prior to the effectuation of the order of suspension, upon appeal filed, the Appellate Division temporarily stayed the operation of the suspension.

I am now advised by the appellant's attorneys that the appeal is being withdrawn and immediate imposition of the penalty is requested. The suspension may now be reimposed.

Accordingly, it is, on this 19th day of September, 1968,

ORDERED that the sixty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-54, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Eunice Saporito for premises 281-283 Scotland Road, Orange, commencing at 2:00 a.m. Monday, September 23, 1968, and terminating at 2:00 a.m. Friday, November 22, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - VIOLATION OF SPECIAL CONDITION -
LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ROY M. HAERTER, FLORENCE E. HAERTER,
OLGA J. DOMOTOR, TRAVELODGE CORP.
t/a Travelodge of Toms River
Intersection of W. Water St. &
Main Street, Dover Township
PO Toms River, New Jersey

CONCLUSIONS
and
ORDER

Holders of Plenary Retail Consumption License C-25 issued by the Township Committee of the Township of Dover

Licensees, by Roy M. Haerter, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

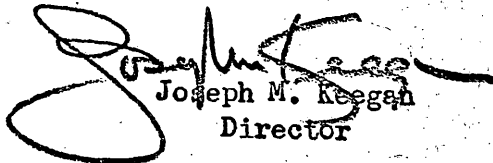
BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on March 15, 1968 and prior thereto, they had a public bar on their licensed premises contrary to special condition imposed on their license by the municipal issuing authority, in violation of R.S. 33:1-32.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re DiPeri, Bulletin 1508, Item 5.

Accordingly, it is, on this 23d day of September, 1968,

ORDERED that Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Dover to Roy M. Haerter, Florence E. Haerter, Olga J. Domotor, Travelodge Corp., t/a Travelodge of Toms River, for premises intersection of W. Water Street and Main Street, Dover Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, September 30, 1968, and terminating at 2:00 a.m. Saturday, October 5, 1968.


Joseph M. Keegan
Director