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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 1987

July 20, 1971

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STATE OF NEW JERSEY
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BULLETIN 1987

1. COURT DECISIONS - FLYHA v. RIDGEFIELD and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1888-69

FLYHA, INCORPORATED,

Plaintiff-Appellant,

v.

BOROUGH COUNCIL OF THE
BOROUGH OF RIDGEFIELD,

Defendant-Respondent,

and

DIVISION OF ALCOHOLIC BEVERAGE
CONTROL, DEPARTMENT OF LAW AND
PUBLIC SAFETY, STATE OF NEW JERSEY,

Respondent.

Argued May 25, 1971 - Decided June 10, 1971.

Before Judges Conford, Kolovsky and Carton.

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

Mr. Joel M. Ellis argued the cause for appellant
(Messrs. Gross, Kemetrakis & Donohue, attorneys).

Mr. Michael L. Scherby argued the cause for defendant-
respondent Borough Council of the Borough of Ridgefield.

Mr. David S. Piltzer, Deputy Attorney General, argued
the cause for respondent Division of Alcoholic Beverage
Control (Mr. George F. Kugler, Jr., Attorney General,
attorney).

PER CURIAM.

Appeal from the decision in Flyha, Inc.,
Bulletin 1923, Item 1, Director Affirmed.
Opinion not approved for publication by the
Court Committee on Opinions.

2. NEW LEGISLATION - SALE OF MALT BEVERAGES IN ORIGINAL CONTAINERS DURING CERTAIN HOURS - STATE REGULATION NO. 38 SUPERSEDED IN PART.

Senate No. 2108 was signed into law becoming Chapter 184 of the Laws of 1971 by the Governor on June 2, 1971. This law takes effect at 12:01 A.M. on Friday, July 2, 1971 as a supplement to the State Alcoholic Beverage Law as R.S. 33:1-40.3 and supersedes in part State Regulation No. 38. The law provides as follows:

R.S. 33:1-40.3. Whenever the sale of alcoholic beverages for consumption on the premises and off the premises or either thereof is authorized in any municipality by ordinance or rule or regulation of the Division of Alcoholic Beverage Control, by the holder of a retail consumption or retail distribution license, such ordinance or rule shall authorize the sale of malt alcoholic beverage in original bottle or can containers for consumption off the premises on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted and authorized in said municipality.

All parts of ordinances and regulations of the Director of the Division of Alcoholic Beverage Control inconsistent with the provisions of this act are superseded to the extent of such inconsistency.

RICHARD C. McDONOUGH
DIRECTOR

Dated: June 22, 1971

3. NEW LEGISLATION - AMENDMENT TO STATE NUMERICAL LIMITATION LAW WITH RESPECT TO NUMBER OF PLENARY RETAIL DISTRIBUTION LICENSES.

On June 7, 1971, the Governor approved Senate No. 652 which thereupon became Chapter 196 of the Laws of 1971, effective immediately. The act amends R.S. 33:1-12.14 to read as follows (deleted matter bracketed, new matter underlined):

R.S. 33:1-12.14. Except as otherwise provided in this act, no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each 3,000 of its population as shown by the last then preceding Federal census; and no new plenary retail distribution license shall be issued in a municipality unless and until the number of such licenses existing in the municipality is fewer than one for each 5,000 ~~3,000~~ of its population as shown by the last then preceding Federal census.

This act shall take effect immediately but remain inoperative until the promulgation of the 1970 decennial Federal census.

RICHARD C. McDONOUGH
DIRECTOR

Dated: June 22, 1971

4. NOTICE TO RETAILERS - REQUESTS FOR DEFAULT LIST - FEE NOW REQUIRED.

NOTICE TO ALL RETAIL LICENSEES:

I have been concerned with the increase in requests from licensees or their attorneys for itemized lists of default notices filed by wholesale licensees against specific retail licensees and for which no payment notices have been received.

The compilation of such lists consumes a great deal of the Division's time and is not an obligatory function of this office. It is the responsibility of licensees to maintain their own financial records. We have complied with requests in the past merely as a courtesy to licensees and attorneys.

The practice has now become so burdensome that we find it necessary to discontinue it except in instances where the Division is reimbursed for the time and expense involved.

Accordingly, effective immediately, requests for lists of recorded default notices must be accompanied by a fee of \$5.00 or the request will be denied.

RICHARD C. McDONOUGH
DIRECTOR

5. APPELLATE DECISIONS - SENA v. UNION BEACH.

Salvatore Sena, t/a Village Inn,)
)
 Appellant,)
)
 v.)
)
 Borough Council of the Borough of)
 Union Beach,)
)
 Respondent.

On Appeal
 CONCLUSIONS
 and
 ORDER

-----)
 Loring and Miele, Esqs., by Arthur Dennis Loring, Esq., Attorneys
 for Appellant
 Blanda and Blanda, Esqs., by Philip J. Blanda, Jr., Esq., Attorneys
 for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant (a plenary retail consumption licensee for premises 900-902 Union Avenue, Union Beach) was found guilty in disciplinary proceedings by the respondent (hereinafter Council) of two charges alleging sales to minors on May 23, 1970 and April 12, 1970, in violation of Rule 1 of State Regulation No. 20; whereupon his license was suspended for thirty days effective September 17, 1970.

In his petition of appeal appellant alleges that the Council's action was erroneous because "There was no proof presented at the hearing supporting the allegations"

The answer of the Council admits the jurisdictional allegations of the petition and denies the substantive allegations thereof.

An order was entered by the Director of this Division on September 16, 1970 staying the Council's order of suspension pending the determination of this appeal.

The matter was presented for determination upon the stenographic transcript of the proceedings before the Council, supplemented by additional testimony presented on behalf of both parties. Rules 6 and 8 of State Regulation No. 15.

The testimony, as reflected in the transcript of the proceedings both before the Council and at this plenary de novo hearing shows the following: With respect to the first charge, which alleged that on or about May 23, 1970 appellant sold, served, and delivered and permitted the sale and service of alcoholic beverages to two female minors, the Council produced New Jersey State Police Officer Richard Wisniewski who is assigned to the Intelligence office of the State Police. He gave the following account: On May 23, 1970, at about 11:15 p.m., in the company of other State troopers, he entered the subject premises and observed two females sitting at the end of the bar with glasses containing drinks in front of them. These glasses were of the mixed-drink-glass type and appeared to him to contain whiskey. As soon as these minors saw him, they got up from their seats and went to a pinball machine next to the wall. He smelled the

drinks and this satisfied him that they contained alcoholic beverages. He then proceeded to where the girls were standing and asked them for identification. Patricia --- first gave him her date of birth as February 1, 1949. The other female (who identified herself as Ann Walters (not her true name)) stated that her date of birth was November 23, 1947. He was not satisfied with their verbal representation as to age and questioned the appellant, who was then acting as bartender, with reference to the service of alcoholic beverages to these girls.

Sena admitted that he served them drinks and did not check their ages because he stated that they had been served on these premises on several prior occasions and he "knew them to be twenty-one."

The female minors were then taken to the State police barracks. However, before they arrived at the barracks the minor who identified herself as Ann Walters admitted that that was not her true name; that her name was Althea ---. Althea then admitted that she was in fact only eighteen years of age and this was repeated on the following day when she appeared at the Violation Bureau of the Municipal Court and gave her date of birth as September 2, 1951. Patricia produced her driver's license which supported her admission that she was born in April 1951 and was in fact nineteen years of age.

Neither one of the minors testified at the hearing before the Council. However, at this plenary de novo hearing both minors admitted that they were under twenty-one years of age on the date alleged herein but denied that they consumed any alcoholic beverages. Althea explained that the reason she gave a false name to the State troopers at the time of confrontation was that she was "scared." She admitted, however, that she did tell the State troopers that she and Patricia had consumed alcoholic beverages, again explaining that she made this confession because she was scared and that "we were led to believe that if we would go along with them everything would be all right." Patricia could not recall the details of a conversation with the troopers with respect to her alleged consumption of alcoholic beverages, and stated that she too was scared. Finally, she stated that she had previously visited these premises on one prior occasion and was there for about five minutes.

Salvatore Sena (appellant) did not testify in defense of this charge before the Council, nor did he produce any witnesses in his behalf. However, at the plenary de novo hearing he admitted serving these two females but insisted that he did not have to check their ages because they were merely drinking non-alcoholic beverages. He was asked by his attorney the following questions:

"Q. Do you recall the Trooper asking you if you had served them any alcoholic beverages?

A. Yes.

Q. What did you reply to the Trooper?

A. I told him I served them.

Q. Did you tell them what you had served them?

A. He didn't ask me."

With respect to the April 12, 1970 incident set forth in the second charge, State Trooper Robert Corcoran gave the following account: At about 9 p.m. on that date he observed Andrew --- emerging from the subject premises with a package in a brown paper bag under his arm. His immediate impression was that Andrew was a minor and, when Andrew entered his motor vehicle and proceeded about one hundred feet, he was intercepted by this State Trooper. During his interrogation of Andrew the minor showed him the package which

contained two containers of beer. He examined these containers, observed and smelled their contents, and was satisfied, on the basis of his experience, that the contents were beer. The minor did not have his license or registration in his possession and about an hour later Andrew appeared at the Keyport station and produced identification which established that he was in fact a minor and was born on July 14, 1951. This was established both by his oral admission and his driver's license. The minor is presently in service and was not produced at this hearing.

Sena did not testify in defense of this charge at the hearing before the Council. However, he did testify at this plenary appeal hearing and denied selling beer to Andrew. He stated that, when the State Trooper produced the two plastic containers on his arraignment in a Municipal court on a criminal charge based upon the alleged sale, he contended that these containers were not the kind used in his premises. However, he did acknowledge that he sells draught beer in containers. He was then asked with respect to the alleged sale to this minor:

"Q Do you recall seeing either [Andrew] or his brother in your tavern on April 12?

A I don't recall. We were busy."

I have carefully analyzed and evaluated the testimony on both charges and have had an opportunity to observe the witnesses as they appeared at the de novo hearing. These proceedings, which are civil in nature, 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). Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

With respect to the first charge, I find the account given by State Trooper Wisniewski to be forthright and credible. On the other hand, the testimony of the two female minors does violence to a sense of reality. It is inconceivable to me that these two minors came in merely to buy a 7-Up or a Coca-Cola. The fact is that the trooper smelled the drinks and, based upon his own experience with this particular type of drink, was satisfied that it was a "7-and-7" containing an alcoholic beverage.

Further, Althea gave a wrong name to the trooper and thus the credibility of her testimony is clearly affected thereby. Both minors admitted to the troopers that they had consumed alcoholic beverages, and Sena admitted, upon confrontation, that he served them. It seems clear to me that, when Sena was questioned about the alcoholic beverages, he knew what the trooper meant in answering that question.

Furthermore, it seems incomprehensible to me that Sena did not take the stand and testify in either of these charges at the hearing before the Council. Of course, he was undoubtedly guided by the advice given to him by his attorney.

With respect to the second charge, I similarly find that the testimony of State Trooper Corcoran was credible and accurately depicted what had transpired on the date alleged herein. The minor at the time of his confrontation with the State Trooper frankly admitted without hesitation that he purchased these two containers of beer at the licensed premises, and there is no doubt in my mind

in support of the trooper's testimony that the containers did in fact contain beer. Since the minor admitted that he purchased beer, there is a permissible inference that he was, indeed, sold beer, and further warrants judicial notice of the fact that the same constitutes an "alcoholic beverage" within the statutory definition. R.S. 33:1-1(b); see State v. Marks, 65 N.J.L. 84, 87; Holmes v. Cavicchia, 29 N.J. Super. 434. Sena's denial that the containers were the kind used by him does not impress me as being credible.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Council was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502 (1947). Although additional testimony was offered at this plenary hearing on appeal, I am persuaded, based on the whole of the record, that the accounts given by the witnesses on behalf of the Council on both charges were credible, forthright and truly reflected the actual occurrences on the dates herein charged.

Accordingly, I conclude that the Council has established the truth of the charges by a fair preponderance of the credible evidence; that it thus acted reasonably thereon in reaching a determination that appellant was guilty of the said charges.

The prevention and sale of intoxicating liquors to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., supra; In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). I find that appellant has failed to sustain the burden of establishing that respondent's action was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

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

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 transcripts 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 26th day of May 1971,

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

ORDERED that my order dated September 16, 1970, staying respondent'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-11 issued by the Borough Council of the Borough of Union Beach to Salvatore Sena, t/a Village Inn, for premises 900-902 Union Avenue, Union Beach, be and the same is hereby suspended for the balance of its

term, viz., until midnight June 30, 1971, commencing at 2:00 a.m. Monday, June 14, 1971; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Wednesday, July 14, 1971.

Richard C. McDonough
Director

- 6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS - GUILTY PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

REM LIQUORS, INC.
101 Kelly Street
Menlo Park Terrace
Woodbridge, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-11 issued by the Municipal Council of the Township of Woodbridge.

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

BY THE DIRECTOR:

Licensee pleaded guilty to a charge preferred by the Municipal Council of the Township of Woodbridge that on September 23, 1970 it sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20, in consequence of which its license was suspended for a period of fifteen days.

The aforesaid suspension was stayed upon application of licensee to this Division for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

It also appears that the local issuing authority adopted a resolution concurring with the request of the licensee for the imposition of the fine herein.

Having favorably considered the application in question, I have determined to accept an offer of compromise by the licensee to pay a fine of \$975.00 in lieu of suspension.

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

ORDERED that the payment of \$975.00 fine by the licensee is hereby accepted in lieu of a suspension of fifteen days.

Richard C. McDonough
Director

ACTIVITY REPORT FOR MAY 1971

ARRESTS:		
Total number of persons arrested - - - - -		44
Licenses and employees - - - - -	24	
Bootleggers - - - - -	2	
Minors - - - - -	18	
SEIZURES:		
Motor vehicles - trucks - - - - -		1
Distilled alcoholic beverages - gallons - - - - -		11.69
Wine - gallons - - - - -		9.375
Brewed malt alcoholic beverages - gallons - - - - -		20.15
RETAIL LICENSEES:		
Premises inspected - - - - -		622
Premises where alcoholic beverages were gauged - - - - -		490
Bottles gauged - - - - -		7872
Premises where violations were found - - - - -		169
Violations found - - - - -		255
Application copy not available - - - - - 38	Unqualified employees - - - - - 80	
No disposal permit - - - - - 14	Form E-141-A incomplete - - - - - 25	
No Form E-141-A on premises - - - - - 32	Other violations - - - - - 66	
STATE LICENSEES:		
Premises inspected - - - - -		31
License applications investigated - - - - -		13
COMPLAINTS:		
Complaints assigned for investigation - - - - -		457
Investigations completed - - - - -		489
Investigations pending - - - - -		289
LABORATORY:		
Analysis made - - - - -		109
Refills from licensed premises - bottles - - - - -		78
Bottles from unlicensed premises - - - - -		5
Narcotic drugs - - - - -		2
Firearms - - - - -		1
Ammunition - shells - - - - -		4
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		26
Persons fingerprinted for non-criminal purposes - - - - -		428
Identification contacts made with other enforcement agencies - - - - -		391
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		3
Violations involved - - - - -		3
Sales to non - members by clubs - - - - - 2		
Sales to minors - - - - - 1		
Cases instituted at Division - - - - -		56 *
Violations involved - - - - -		72
Solicitor furnishing gifts with retail sale - - - - - 12	Sale below filed price - - - - - 2	
Furnishing gifts with retail sale - - - - - 8	Failure to close premises	
Sale to minors - - - - - 8	during prohibited hours - - - - - 1	
Permitting immoral activity on premises - - - - - 6	Fraud in application - - - - - 1	
Sale to retailer while on Non-Delivery List - - - - - 6	Purchase on credit while	
Delivery without bona fide invoices - - - - - 5	on Default List - - - - - 1	
Sale during prohibited hours - - - - - 4	Purchase while on Non-	
Permitting illegal activity on premises - - - - - 4	Delivery List - - - - - 1	
Sale on credit to retailer on Default List - - - - - 3	Solicitor aiding and	
Beverage Tax Law non-compliance - - - - - 3	abetting sale to retailer	
Purchase from improper source - - - - - 2	on Non-Delivery List - - - - - 1	
Unauthorized transportation - - - - - 1	Sale outside scope of	
Permitting gambling on premises (numbers) - - - - - 1	License - - - - - 1	
Sale to non-members by club - - - - - 1		
* Includes 2 cancellation proceedings - licenses improvidently issued in that licenses were disqualified by reason of conviction of officers of crimes involving moral turpitude.		
Cases brought by municipalities on own initiative and reported to Division - - - - -		24
Violations involved - - - - -		29
Sale to minors - - - - - 12	Act of violance - - - - - 1	
Permitting brawl on premises - - - - - 4	Unqualified employee - - - - - 1	
Sale during prohibited hours - - - - - 3	Employment without	
Permitting gambling on premises - - - - - 3	identification card - - - - - 1	
Permitting illegal activity on premises - - - - - 2	Fraud in application - - - - - 1	
Failure to close premises during prohibited hours - - - - - 1		
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		56
Appeals - - - - - 4	Seizures - - - - - 1	
Disciplinary proceedings - - - - - 31	Tax revocations - - - - - 10	
Eligibility - - - - - 9	Applications for license- 1	
STATE LICENSES AND PERMITS:		
Total number issued - - - - -		12,800
Licenses (State) - - - - - 1	Transit certificates - 1504	
Solicitors permits - - - - - 20	Transit insignia - - - - - 9584	
Employment permits - - - - - 585	Miscellaneous permits - 824	
Disposal permits - - - - - 38		
Social affair permits - - - - - 444		
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued - - - - -		112

RICHARD C. MC DONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

8. DISCIPLINARY PROCEEDINGS - LEWDNESS AND INDECENT PERFORMANCE (GO-GO GIRLS) - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

Paula's Club, Inc.
t/a Paula's Club
42 Wall Street
Passaic, N.J.,

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-48, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.

Walter J. Tencza, Esq., Attorney 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 July 18, 1970, you allowed, permitted and suffered in and upon your licensed premises, lewdness, immoral activity and foul, filthy, indecent and obscene conduct, viz., in that you allowed, permitted and suffered a female dancer commonly known as a 'Go Go Girl' to perform on your licensed premises for the entertainment of your customers and patrons in obscene, indecent, filthy, lewd, lascivious, disgusting and immoral manner and engage in acts, gestures and movements of and with her hands and other parts of her body in association with such acts, gestures and movements in manner and form having obscene, indecent, filthy, lewd, lascivious, disgusting, immoral and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20."

The issue presented here is whether or not a female employee, a "go-go" girl, put on a lewd and indecent show in the licensed premises. In support of the charge, the Division relied upon the testimony of two ABC agents.

Agent V testified that on July 18, 1970 he visited the licensed premises with agent P shortly after midnight, seated himself at the bar at a position affording a clear view and there watched the performances of a "go-go" girl whose first name was Barbara. She performed several dances that evening, most of which were proper and typical of "go-go" dancers. He characterized her concluding performance as filthy. In this latter dance she exposed her buttocks, then placed her finger so that it protruded from her costume in such a way as to resemble a disgusting sex act, following which she removed her undergarment so that her body below the waist was exposed. Her dance was interspersed with "bumps and grinds" performed in a sexually suggestive manner. The above related exposure, coming at the end of her dance was followed by patrons calling out: "More, more, take it off". At this time her body, below the waist, was

exposed. This was observable by the patrons as well as the bartender and the licensee herself. On cross examination the witness admitted there was a variance between his report and his testimony, in one instance declaring that his report was in error and in another that his direct testimony was in error.

Agent P substantially corroborated the basic testimony of agent V.

In defense of the charge, Donald Gall, who operated a tavern in the general area of the subject licensed premises and who was an advisor of the licensee, testified that he was in the premises on the evening in question, saw the performances and found nothing offensive therein.

Peter Rokotz, a former employee of the licensee testified that he saw the performance; that it was not lewd and to the contrary was "lovely". He conceded that he saw the dancer remove part of her costume while she was dancing.

Maria Spears, the licensee, testified that she assists in tending bar and does a "go-go" act herself. She indicated she was having trouble with the musicians that evening so that her attention was diverted; but what she did see of the dancer's performance was not lewd nor indecent.

The dancer, Barbara, testified that she heard the testimony of the agents and the things alleged that she did were untrue. Her actions were completely misconstrued. Her hands did, from time to time, go under her bikini costume but merely to pull it up, as it was inclined to slide down her sweaty body. At her final performance, she was dressed ready to go home, but because she had to wait to be paid, voluntarily did another dance and she removed her undergarment while still on the "go-go" platform. She denied, however, ever being unclothed, asserting that her body was always covered by panty hose. She further testified that she is "clean", meaning that she is clean shaven at her private parts, and, in addition, has a scar on her buttocks. The latter testimony was in contradiction to that of the agents who had testified that they could see pubic hair and that she had lowered her costume below the buttocks.

Preliminarily, it should be stated that evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself and should be such as common experience and observation of mankind can approve as probable under the circumstance. We have no test of the truth of human testimony except its conformity to our knowledge, observation and experience. McKeon v. Delaware Rr. Co., 100 N.J.L. 258, 261 (Sup. Ct. 1924). See also Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

Gall, during the course of his testimony, testified the dancer did perform once while wearing a dress and did not expose any private areas of her body. However, he admitted that she did "flip her dress".

Rokotz testified that while the female was dancing, clad in a mini dress, something fell to the ground which she up and held in her hand. The licensee denied the dancer performed while clad in a dress. However, the dancer admitted that she wore a dress from under which she removed the lower portion of her bikini costume. She asserted that because of her scar she wore tights and that such tights were "panty hose".

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 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); Howard Tavern v. Division of Alcoholic Beverage Control, (App. Div. 1962), not official reported, reprinted in Bulletin 1491, Item 1.

During the course of the hearing, the attorney for the licensee moved that a female employee of the Division examine the body of the dancer to verify the existence of the scar on the buttocks. This offer of demonstrative evidence was rejected. The court held in Sedlack v. General Motors Corp., 253 F. 2nd 116, that the admissibility of demonstrative evidence is largely within the discretion of the trial judge. The court in Hampton v. Rautenstrauch, 338 S. W. 2nd 105, was in accord with this above statement. The determination of relevancy and explanatory value of demonstrative evidence primarily rests within the discretion of the trial court. Kunzman v. Cherokee Sils Co., 114 N.W. 2nd 534.

In his summation, great emphasis was placed by the attorney for licensee on variations in the testimony of the two agents. Admittedly there were variations in the testimony between them. The variations or discrepancies, which I have carefully analyzed and considered, do not relate to the substance of the charge or to any material issue but surround details of minor consequence and do not affect the ultimate result.

Counsel raised the doctrine of "falsus in uno, falsus in omnibus" in an attack upon the testimony of the agents. The maximum is not a mandatory rule of evidence but rather pertains to a permissible inference which the finder of fact may or may not draw. The testimony is not to be stricken in its entirety on the ground that it is impossible to believe in one respect. State v. Guida, 118 N.J.L. 289 (Sup. Ct. 1937).

Both agents were definite in their description of the performance which they characterized as being lewd. After examining all of the evidence herein it is my view that the Division has met the challenge of establishing the truth of the charge by a preponderance of the credible evidence.

Accordingly, after considering the entire record and the various precedents cited, I am persuaded by the clear and convincing proofs in this case that the charge has been sustained by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charge.

Absent prior adjudicated record of the licensee, it is further recommended that the license be suspended for a period of thirty days. Re The Garden House, Bulletin 1920, 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 exhibit and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

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

ORDERED that Plenary Retail Consumption License C-48, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Paula's Club, Inc., t/a Paula's Club, for premises 42 Wall Street, Passaic, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1971 commencing at 3:00 a.m. Monday, June 14, 1971; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Wednesday, July 14, 1971.

Richard C. McDonough
Director

9. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS - GUILTY PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

UNION LIQUORS, INC.)
3810 Kennedy Boulevard)
Union City, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-179 issued by the Board of Commissioners of the City of Union City.)

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

BY THE DIRECTOR:

Licensee pleaded guilty to a charge preferred by the Board of Commissioners of the City of Union City that on August 3, 1970, it sold alcoholic beverages to three minors, all aged 18, in violation of Rule 1 of State Regulation No. 20, in consequence of which its license was suspended for a period of ten days.

The aforesaid suspension was stayed upon application of licensee to this Division for the imposition of a fine in lieu of said suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

It also appears that the local issuing authority adopted a resolution which concurred with the request of the licensee for the imposition of the fine herein.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400.00 in lieu of suspension.

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

ORDERED that the payment of \$400.00 fine by the licensee is hereby accepted in lieu of a suspension for ten days.

Richard C. McDonough
Director

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR VIOLATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PINK'S BAR & GRILL, INC.
424 Paulison Avenue
Passaic, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-78 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic.

John M. Keegan, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleaded non vult to a charge alleging that on January 20, 1971, it possessed three bottles of alcoholic beverages which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of two suspensions of license, one by the Director for 10 days, effective June 14, 1965 for sales in violation of Rule 1 of State Regulation No. 38. Re Pink's Bar & Grill, Inc., Bulletin 1627, Item 5; and the other for 15 days effective June 21, 1968 by the municipal issuing authority for permitting premises to be open during hours prohibited by local ordinance.

The suspension of licenses by the Director for dissimilar violation occurring more than five years ago disregarded, but considering the record of the suspension for dissimilar violation occurring within the past five years, the license will be suspended for twenty-five days. Re Sussex Lanes, Bulletin 1915, Item 5, with remission of five days for plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 27th day of May, 1971,

ORDERED that Plenary Retail Consumption License C-78 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Pink's Bar & Grill, Inc., for premises 424 Paulison Avenue, Passaic, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1971, commencing at 2:00 A.M. Tuesday, June 15, 1971; and it is further

ORDERED that any renewal license that may be granted be and the same is hereby suspended until 2:00 A.M. Monday, July 5, 1971.

Richard C. McDonough
Director

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

104 Wallace St., Inc.)
t/a Ernie's Tavern)
158 So. Orange Avenue)
Newark, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-777, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

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Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division

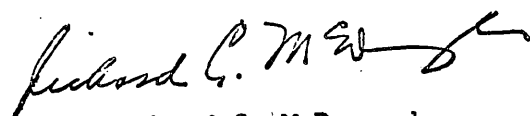
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 13, 1971 it possessed alcoholic beverages in four 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 Dor & Al, Inc., Bulletin 1917, Item 3.

Accordingly, it is, on this 27th day of May 1971,

ORDERED that Plenary Retail Consumption License C-777, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 104 Wallace St., Inc., t/a Ernie's Tavern, for premises 158 So. Orange Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, June 14, 1971, and terminating at 2 a.m. Tuesday, June 29, 1971.


Richard C. McDonough
Director