

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

BULLETIN 2097

April 25, 1973

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

BULLETIN 2097

April 25, 1973

1. DISCIPLINARY PROCEEDINGS - SUMMARY OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary
Proceedings against:

CONCLUSIONS
AND ORDERS

- A. S & L Wallace's Inc., t/a Buchanan & Company
116 Clifton Ave., Lakewood
Charge: Sale of alcoholic beverages below filed price - Fine of \$350 in lieu of 5 days suspension - Order: March 16, 1973
S-9492
Lic: D-5
- B. Rockaway Wines & Liquor, Inc.
73 West Main St., Rockaway Boro,
Charge: False statement in application - employment of holder of Solicitor's Permit - Front- (Rule 20 Reg 20) fine of \$2,125 in lieu of 25 days suspension.
S-9172
Lic: D-1
- C. Stanley Popewiny t/a Popewiny's
132 No. Main St. Paterson.
Charge: 'Hours' Regulation - Prior similar violation within 5 years- net suspension 25 days- effective date March 29, 1973 - Order: March 19, 1973.
S-9508
Lic: C-12
- D. Sweebrick, Inc.
713 Jersey Ave., Jersey City
Charge: Gambling- sports events- prior dissimilar record- net suspension 76 days- effective March 28, 1973 - Order: March 19, 1973.
S-9513
Lic: C-376
- E. Jonathan S. Grossberg
5 Horizon Rd. Ft. Lee
Charge: Unlawful transportation of alcoholic beverages in employers vehicle - Unlimited Solicitors Permit held now surrendered to Division - Nolle Prossed - Order: March 19, 1973.
S-9377
Lic: Solrs
Permit-541
- F. A & M Bar & Grill Inc. t/a Manti Bar & Restaurant
229 Park Ave., Paterson.
Charge: Gambling - numbers- prior dissimilar violation- net suspension 76 days-effective March 30, 1973- Order: March 19, 1973.
S-9306
Lic: C-274
- G. Libra, Inc. ta/ Apple Tree Bar & Liquor Store
6 North Black Horse Pike, PO Blackwood (Gloucester Twp)
Charge: Sale to minor, 18- suspension for 10 days net, effective March 27, 1973, - Order: March 19, 1973.
S-9445
Lic: C-1
- H. Arbet Corp. t/a Family Tavern
153 Haddon Ave., Berlin Twp.
Charge: Sale to minor 16, -net suspension for 25 days under present policy - effective March 29, 1973 - Order: March 19, 1973.
S-9516
Lic: C-2
- I. J. Trombetta, Inc. t/a Jimmy's Pleasant Inn
623 Ocean Rd., Point Pleasant (Boro)
Charge: Sale to Minor, 17 - prior dissimilar record - fine of \$2,250 in lieu of 20 days net suspension- Order: March 20, 1973.
S-9499
Lic: C-2
- J. Montville Inn.
167 Route 202, Montville.
Charge: Mislabeling 1 bottle - fine of \$200 in lieu of 5 day net suspension - Order: March 21, 1973.
S-9482
Lic: C-13

- K. 3-D Tavern (Corp)
468 Market St., Paterson
Charge: Failure to have copy of application and list of employees (Rule 16c, Reg 20) - prior dissimilar record - net suspension of 10 days - effective March 26, 1973 - Order: March 21, 1973.
S-9438
Lic: C-239
- L. Suburban Cocktail Lounge
60 Brick Church Plaza, East Orange
Charge: Mislabeling 1 bottle - fine of \$200 in lieu of 5 day net suspension - Order: March 21, 1973.
S-9483
Lic: C-12
- M. Karol Newman Gitter t/a M. Newman Liquors
401 Clinton Ave., Newark
Charge: Failure to have list of employees (Rule 16c Reg 20) fine of \$250 in lieu of net suspension of five days. Order: March 22, 1973.
S-9434
Lic: D-110
- N. Elwena Clark t/a Austin's Rose Garden
138 N. Maryland Ave., Atlantic City
Charge: Gambling- numbers- net suspension of 72 days- effective Apr. 4, 1973 - Order: March 22, 1973.
S-9531
Lic: C-89
- New Edison Bar Corp. t/a New Edison Bar.
410 Broadway, Newark.
Supplemental Order: March 19, 1973 accepting fine of \$400 in lieu of 10 days suspension.
Mun. Rev. 5440
Lic: C-432
- Libra, Inc. t/a Apple Tree Bar & Liquor Store
6 No. Black Horse Pike, PO Blackwood (Gloucester Twp)
Amended Order: March 22, 1973, staying the effective date of suspension, March 27, 1973, for ten days pending consideration of application for the imposition of fine in lieu of suspension.
S-9445
Lic: C-1
- Duffy' Irish House Inc.
50 Bray Ave., PO East Keansburg (Middletown Twp)
Supplemental Order: March 22, 1973 -accepting fine of \$1,620 in lieu of 36 days suspension heretofore imposed.
S-9406
Lic: C-1

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - BRIGHTON HOLDING COMPANY, INC. v. NEWARK.

BRIGHTON HOLDING COMPANY, INC.,)	
t/a Soul Community Liquors)	
& Deli.,)	
Appellant,)	
v.)	AMENDED
)	ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY OF)	
NEWARK,)	
Respondent.)	

Braff, Litvak, Ertag, Wortmann & Harris, Esqs., by Brian C. Harris, Esq.,
Attorneys for Appellant.

William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for Respondent.

BY THE DIRECTOR:

On February 26, 1973 Conclusions and Order were entered herein affirming the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark, dismissing the appeal herein, and reimposing the suspension of fifteen days commencing March 8, 1973 and terminating on March 23, 1973. Re Brighton Holding Company, Inc. v. Newark, Bulletin 2095, Item 11.

Prior to the commencement of the said suspension, appellant made application for the imposition of a fine in lieu of the said suspension in accordance with the provisions of Chapter 9 of the Laws of 1971. By letter dated March 5, 1973, the respondent has advised me that it has no objection to the imposition of a fine in lieu of suspension.

Good cause appearing, it is, on this 6th day of March 1973,

ORDERED that the suspension heretofore reimposed by my order dated February 26, 1973 upon Plenary Retail Distribution License D-73, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Brighton Holding Company, Inc., t/a Soul Community Liquors & Deli., for premises 523 Springfield Avenue, Newark, for fifteen (15) days, effective March 8, 1973, be and the same is hereby stayed until the consideration of appellant's application for the imposition of a fine in lieu of suspension, and until the entry of a further order herein.

ROBERT E. BOWER
DIRECTOR

3. APPELLATE DECISIONS - BRIGHTON HOLDING COMPANY, INC. v. NEWARK.

Brighton Holding Company, Inc.,)
t/a Soul Community Liquors)
& Deli.,)

Appellant,)

v.)

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

Respondent.)

On Appeal
SUPPLEMENTAL
ORDER

Braff, Litvak, Ertag, Wortmann & Harris, Esqs., by Brian C. Harris,
Esq., Attorneys for Appellant
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for
Respondent

BY THE DIRECTOR:

On March 6, 1973 an amended order was entered herein staying the fifteen days suspension reimposed by my order dated February 26, 1973, pending consideration of appellant's application for the imposition of a fine in lieu of suspension and entry of a further order herein. Re Brighton Holding Company, Inc. v. Newark, Bulletin 2097, Item 2.

It now appears that while this application was pending the licensee pleaded non vult to a similar charge alleging that on Sunday, December 17, 1972, at about 1:20 a.m. it sold and delivered and permitted the removal of an alcoholic beverage in its original container from the licensed premises, in violation of Rule 1 of State Regulation No. 38. Re Brighton Holding Company, Bulletin , Item . Therefore, under these circumstances, the application for the imposition of a fine in lieu of suspension is denied, and an order will be entered reimposing the said suspension.

Accordingly, it is, on this 9th day of March 1973,

ORDERED that my amended order dated March 6, 1973 be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Distribution License D-73, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Brighton Holding Company, Inc., t/a Soul Community Liquors & Deli., for premises 523 Springfield Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, March 26, 1973 and terminating at 2:00 a.m. Tuesday, April 10, 1973.

Robert E. Bower
Director

4. NOTICE TO ALL LICENSEES - EXTENSION OF RESALE PRICE LIST.

TO ALL NEW JERSEY LICENSEES:

Due to the recent devaluation of the American dollar, affecting the international monetary market, there has been an increase in the price of many imported alcoholic beverages at their source. This means that importers and wholesalers selling imported alcoholic beverages in this State are now paying, and have been paying, a substantially higher price for such products and are seeking commensurate increases upon resale of these products to retailers.

Consequently, brand owners have filed minimum consumer resale prices to reflect the higher prices. Due to the uncertainty of the increase, distillers and wholesalers were unable to timely compute the amounts of such increases on the items which may be increased and file such prices in accordance with the schedule of filing dates. Accordingly, under authority of Rule 7 of State Regulation No. 34 and Rule 4 of State Regulation No. 30, filers were permitted an extension of time to file wholesale to retail prices and minimum consumer resale prices.

As the result of the number of price changes and the loss of time due to the extension of the filing dates, the Division is unable to publish wholesale to retail and minimum consumer resale price pamphlets to take effect on the normal new price period of April 1, 1973.

Because of this I find an emergency exists warranting the extension of the current quarterly wholesale to retail and minimum consumer resale price lists. Accordingly, under the provisions of Rule 7 of State Regulation No. 34 and Rule 4 of State Regulation No. 30, the prices in effect in the quarterly price pamphlet effective January 1, 1973 will be maintained until the effective date of the NEW PRICE PAMPHLETS WHICH WILL BE APRIL 9, 1973.

CONSEQUENTLY, PRICES WHICH BECAME EFFECTIVE JANUARY 1, 1973 ARE
HEREBY CONTINUED IN EFFECT UNTIL MIDNIGHT APRIL 8, 1973.

ROBERT E. BOWER
DIRECTOR

Dated: March 20, 1973

5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary
Proceedings against

Felix 's Restaurant & Cocktail
Lounge, A Corporation
t/a Haddonview Lounge
D 2 and D 3 Westmont Plaza
Cuthbert and MacArthur Blvd.
Haddon Township, PO Westmont, N.J.,

AMENDED ORDER

Holder of Plenary Retail Consumption
License C-11, issued by the Board of
Commissioners of the Township of Haddon.

Louis N. Caggiano, Esq., Attorney for Licensee

BY THE DIRECTOR:

On March 2, 1973, Conclusions and Order were entered in the above matter suspending the subject license for twenty-eight days, commencing on March 15, 1973 and terminating on April 12, 1973, after the licensee pleaded non vult to two charges alleging that: (1) on divers days from about January 9, 1971 to about July 8, 1972, it purchased alcoholic beverages from an unauthorized source, in violation of Rule 15 of State Regulation No. 20; and (2) from April 30, 1970 to date, it failed to keep proper books of account of the licensed business, in violation of Rule 36 of State Regulation No. 20. Re Felix's Restaurant & Cocktail Lounge, Bulletin 2096, Item 2(G).

The period of the said suspension appears to be in part concurrent with a suspension heretofore imposed upon the licensee by Conclusions and Order dated February 20, 1973 wherein the said license was suspended from March 5, 1973 until March 20, 1973. Re Felix's Restaurant & Cocktail Lounge v. Haddon, Bulletin 2094, Item 4.

Since it was intended that the within suspension should be consecutive, I shall enter an amended order correcting the suspension dates herein.

Accordingly, it is, on this 5th day of March 1973,

ORDERED that said Conclusions and Order dated March 2, 1973 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the Township of Haddon, to Felix's Restaurant & Cocktail Lounge, A Corporation, t/a Haddonview Lounge, for premises D 2 and D 3 Westmont Plaza, Cuthbert and MacArthur Blvd., Haddon Township, be and the same is hereby suspended for twenty-eight (28) days, commencing 2:00 a.m. on March 20, 1973 and terminating 2:00 a.m. Tuesday, April 17, 1973.

ROBERT E. BOWER
DIRECTOR

6. APPELLATE DECISIONS - FELIX'S RESTAURANT v. HADDON TOWNSHIP.

Felix's Restaurant and Cocktail Lounge (a corp.))	
t/a Haddonview Lounge,)	
Appellant,)	
v.)	SUPPLEMENTAL ORDER
Board of Commissioners of the Township of Haddon,)	
Respondent.)	
-----)		
Louis N. Caggiano, Esq., Attorney for Appellant		
Michael A. Orlando, Esq., Attorney for Respondent		

BY THE DIRECTOR:

Appellant appeals from the action of the respondent Board of Commissioners of the Township of Haddon which suspended appellant's plenary retail consumption license for premises Cuthbert Road and MacArthur Blvd., Haddon Township, for fifteen days effective January 2, 1973, after finding it guilty of sale of alcoholic beverages in violation of Rule 1 of State Regulation No. 38.

Upon filing of the appeal, respondent's order of suspension was stayed pending determination of the appeal.

When the matter came on for hearing, neither appellant nor its counsel appeared to pursue the appeal whereupon, on motion of attorney for the respondent I entered an order on February 20, 1973 dismissing the appeal, vacating my order dated January 3, 1973 which stayed respondent's order of suspension and reimposing a suspension of the said license for fifteen days, commencing Monday, March 5, 1973 and terminating on Tuesday, March 20, 1973.

Appellant has filed a verified petition with supporting affidavit requesting the reopening and reinstatement of the said appeal because it alleged that its non-appearance was due to circumstances beyond its control.

The attorney for the respondent having consented to the said reinstatement, I shall enter an order reinstating the said appeal and setting it down for hearing.

Accordingly, it is, on this 14th day of March 1973,

ORDERED that the above stated appeal be and the same is hereby reinstated and set for hearing at the Division offices, 25 Commerce Drive, Cranford, New Jersey on Wednesday, March 28, 1973 at 9:30 a.m.; and it is further

ORDERED that the suspension imposed by the respondent shall be stayed as of March 9, 1973, in accordance with telegram to the respondent on March 9, 1973 until the final determination of this matter and until further order herein.

ROBERT E. BOWER
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - HOURS REGULATION - PRIOR SIMILAR RECORD WITHIN FIVE YEARS - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
)
 Mickey's Inc.)
 t/a Mickey's Lounge)
 17 Charlton Street)
 Newark, N. J.,)
)
 Holder of Plenary Retail Consumption)
 License C-293, issued by the Municipal)
 Board of Alcoholic Beverage Control of)
 the City of Newark.)
 -----)

CONCLUSIONS
 and
 ORDER

Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for
 Licensee
 David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Friday, May 19, 1972 at about 11:47 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a 4/5th quart bottle of Old Judge Brand Pure Grape Wine, at retail in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

On behalf of the Division ABC agent V testified he visited the licensed premises accompanied by agents P and D. He entered the premises, leaving his fellow agents in a post of observation outside, about 11:30 p.m. on Friday, May 19, 1972. He seated himself at the bar and, shortly after arrival, observed three males enter the premises and speak to the bartender. The bartender then reached down to a bottom shelf, handed a bottle to one of the males, and received money for it; the sale was rung up and the money deposited in the register. The purchaser put the bottle in his waist and departed the premises, followed by the agent who signaled his colleagues on the outside of the tavern. The bottle was taken from the alleged purchaser and the agent departed, leaving the further investigation in the hands of agents P and D who had joined him in retrieving the bottle. He explained that, although local police were on the scene, they did not participate in the investigation and were there only as security in the event of trouble. The entire incident took only fifteen or twenty minutes.

Agent P testified that on May 19, 1972, about 11:30 p.m., he accompanied agents V and D to the premises into which agent V entered. About ten minutes later agent V emerged with three males and gave a prearranged signal. One of the males (later identified as Cenekia Hughes) had a bottle in his waist which agent D took from him. Upon confrontation by the agents, Hughes denied the purchase in the licensed premises but stated that he had paid \$1.15 for it when he purchased it at a drug-store about ten o'clock that evening.

Upon entering the premises the agent advised the bartender of the sale, which was denied. Bottles of a like brand of wine were discovered on a shelf below the bar. The witness secured the tape from the register which reflected a sale for \$1.15. He then requested Hughes to take the agents to the drugstore where he had allegedly purchased the bottle, but Hughes demurred, "I can't take you there now because the place is closed."

Agent D testified in corroboration of the account given by agent P, adding that the bottle obtained from Hughes had been given to the Division's chemist to be held for security and analysis. A similar bottle to the one taken from Hughes had been obtained from the licensed premises.

Cenekia Hughes, testifying on behalf of the licensee, stated that about 8:30 p.m. on May 19, 1972, he purchased the bottle found on him at the Post Drugstore for which he paid \$1.15. He was enroute to his brother's home when he met friends who joined him. Eventually crossing the street on which the licensed premises are located, he stopped to tie his shoelace when he was accosted by agent D who asked him to open his coat; when he did so, the bottle which he had inside his waist was revealed. He accompanied the agents into the premises where he denied making the purchase at the subject premises.

On cross examination Hughes admitted having purchased another brand of wine earlier in the afternoon of the same day, which he insisted was a Saturday. A month or so after the incident he visited the owner of the licensed premises "because it seems like I had got the man in problems he had nothing to do with" and "I went to see the man and explained I was sorry ... that I had caused him that embrarassment."

George Jones testified that he was the bartender on duty in the licensed premises on the evening of May 19. He explained that the item of \$1.15 on the cash register tape reflected a purchase of beer for fifty cents and some rum for fifty-five cents and potato chips for ten cents, totaling \$1.15.

The bar manager, Cephas Gamble, testified that he was in the premises on the evening in question. He denied the sale to Hughes and repeated Hughes' statement that the bottle had been purchased elsewhere. He recalled only that Hughes had entered the premises with the ABC agents.

Louis Belfer (a corporate officer of the licensee corporation) testified that he was present in the premises during the evening of May 19, 1972. He saw Hughes for the first time that evening accompanied by ABC agents whose actions he described as abusive and whose conversations contained profanity. He vigorously denied the sale to Hughes and explained that two prior offenses by his establishment made him particularly mindful of the after-hours restrictions on such sales.

Preliminarily I observe that it is a 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).

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observations of mankind can approve as probable in the circumstances. Spagnuolo v.

Bonnet, 16 N.J. 546 (1954). The finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042. "Every fact or circumstance tending to show ... the witness' relation to the case or the parties is admissible to the end of determining the weight to be given to his evidence." State v. Spruill, 16 N.J. 73, 78 (1954). "It is fundamental that the interest or bias of a witness is relevant in evaluating his testimony." In re Hamilton State Bank, 106 N.J. Super. 285, 291 (App.Div. 1969).

Based on the foregoing principles, I am persuaded that the testimony of the agents, presented in a forthright and detailed manner, was not a fabrication or improperly motivated but was factual and credible version of what actually transpired.

I reject the testimony offered by the licensee as totally incredible. Hughes would have us believe that an ABC agent stopped him while he was a pedestrian innocently walking in front of the premises, asked him to open his coat and discovered a bottle. Hughes described the agent as a small white man; Hughes and his companions were black, walking in a totally slum area. Such conduct by an agent would be contrary to every accepted practice as well as good sense and does violence to common experience of mankind. I find his testimony contradictory and palpably fabricated. The licensee's denial of the sale of the particular brand discovered on the premises, together with the empiric evidence as reflected by the tape record of the specific sale, leave no doubt in my mind that this version is contradictory, incredible and not worthy of belief. Particularly is this evident from the admission by Hughes that he returned to the licensed premises a month later merely to "apologize" to the owner.

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

The licensee has a prior record of suspension of twenty-five days for a similar violation occurring on December 5, 1971, in lieu of which suspension a fine in compromise in the sum of \$1,000 was imposed by the Director by order dated May 17, 1972. Re Mickey's, Inc., Bulletin 2053, Item 8. In addition, the license, previously in the names of the corporate stockholders, was suspended by the municipal issuing authority for ten days effective April 19, 1971, on a similar "hours" violation.

In view of the record of repetitive similar violations, it is further recommended that the license be suspended for sixty days. Re 188 Boyd St. Inc., Bulletin 2068, Item 1B.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were filed on behalf of licensee pursuant to Rule 6 of State Regulation No. 16.

In his exceptions, the attorney for the licensee argues that Agent Vestal's testimony lacks credibility and, also, should be discounted because he was subsequently separated from his employment with this Division. The record manifests that this agent's testimony was corroborated by the testimony of other agents assigned to this investigation. Furthermore, his separation from his employment with this Division had no relationship or relevance to this matter.

The licensee also submitted a petition on February 12, 1973 requesting the reopening of this matter in order to introduce supplemental testimony of one Rose Moore which, it alleges, was not available at the time of the hearing.

Rose Moore allegedly would testify that the alleged purchaser of the alcoholic beverages in these premises entered the premises with the bottle of liquor in his clothing and did not actually make the purchase. In denying the petition I noted that the alleged violation occurred on May 19, 1972 and the hearing took place on September 26, 1972. Rose Moore was apparently a regular patron of these premises and there was no allegation in the petition that her testimony was not available at the time of the hearing and that the licensee could not have obtained such testimony upon inquiry and with due diligence.

I found that the testimony of Cenekia Hughes, the alleged purchaser, was totally unbelievable since he asserted that he never even entered the premises on the date alleged in the said charge. I further found that the proffer of proof would not substantially affect the ultimate determination. Thus, the petition for reopening was denied. I find that the matters contained in the exceptions have either been fully considered in the Hearer's report or lack substantial merit.

Licensee's request for oral argument before me is unwarranted and is, accordingly, denied.

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

Accordingly, it is, on this 6th day of March 1973,

ORDERED that Plenary Retail Consumption License C-293, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mickey's Inc., t/a Mickey's Lounge for premises 17 Charlton Street, Newark, be and the same is hereby suspended for sixty (60) days,* commencing 2:00 a.m. Monday, March 19, 1973 and terminating 2:00 a.m. Friday, May 18, 1973.

Robert E. Bower
Director

* By order dated March 15, 1973, the effective dates of suspension were amended to commence at 2:00 A.M. Tuesday, May 1, 1973 and to terminate at 2:00 A.M. Saturday, June 30, 1973.

8. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) ON PREMISES - LICENSE
SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary)
Proceedings against)

Henry Sydlar & Doris Sydlar)
t/a First Ward Tavern)
192 Grand Street)
Jersey City, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-348, issued by the Municipal
Board of Alcoholic Beverage Control of)
the City of Jersey City.)
-----)

Malfitano, Claudat & Kealy, Esqs., by Anthony F. Malfitano, Esq.,
Attorneys for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to a charge alleging that they permitted gambling on their licensed premises on April 19, 20, 23, 29, May 7 and 14, 1971, by making and accepting bets on a lottery known as "numbers game" and bets on horse races, all in violation of Rules 6 and 7 of State Regulation No. 20.

At the outset of the hearing the Division moved to amend the complaint by correcting a typographical error wherein one of the dates of the charge cited as April 23 should have been properly designated as April 28. The charge was so amended without objection.

Detective Robert J. Gaugler, who had been assigned to the Gambling Unit of the New Jersey State Police for the past four years, has had extensive training in the field of gambling and has participated in excess of one hundred gambling investigations, testified as follows: Working as an under-cover agent he visited the licensed premises on a number of occasions beginning on April 19, 1971, at which time he found the licensee Henry Sydlar tending bar unassisted. On April 19 he observed Sydlar accept a bet from a patron on that occasion. The following day he returned, placed a horse bet with Sydlar who, when attempting to deliver the bet by telephone and receiving a busy signal, volunteered that "They must be taking book there. I can't get through." On April 28, 1971, he returned and observed Sydlar taking bet slips from patrons. He placed bets with Sydlar on both horse races and numbers. The bet slips were taken by Sydlar to his apartment directly above the tavern. On May 7, 1971, he returned to the tavern and again placed bets on horse races and numbers.

On May 14, 1971, a raid on the licensed premises was planned with New Jersey State Police detectives, in consequence of which he provided Detective Dragotto with information concerning the interior of the premises, bets intended to be made and two one-dollar bills marked for later identification. He entered the premises where he was advised by Sydlar that his bets should be placed with the co-licensee Doris Sydlar, wife of Henry Sydlar. He placed bets with her and gave her the marked money, whereupon she ascended the stairs to the apartment.

Detective Patsy Dragotto testified that he is a member of the New Jersey State Police and, as such, had obtained a search warrant for use on May 14, 1971, at the licensed premises. He arrived there about eleven o'clock in the morning, met Detective Gaugler and recorded the serial numbers of the marked money. At 1:40 p.m. he entered the premises and found the co-licensee Mrs. Sydlar tending bar. Upon informing her of the search warrant and that he wished to see her husband, she began an ascent of the stairs, followed by the detective and, when halfway up, Sydlar appeared at the doorway of the apartment. She yelled "Police", whereupon Sydlar retreated into the apartment, followed by the detective.

The search of the apartment and the person of Sydlar revealed the presence of the marked money and numerous betting slips, as well as other gambling paraphernalia. Sydlar was arrested and charged with gambling.

No effort has been made herein to detail the specific amounts bet by Detective Gaugler or the names of the horses, races or numbers selected as such listing would be extensive and serve no useful purpose. Neither licensee was called upon to testify on his or her behalf, hence the defense was limited to an attack upon the credibility of the Division's witnesses.

It should be noted that "... failure of a party to testify may invite the indulgence against him of every inference warranted by the evidence presented by his adversary." 31A C.J.S. 156(4) Evidence 422; Hackensack Motel Corp. v. Little Ferry, Bulletin 1648, Item 1.

The total quantum of proof in the instant matter consists of the testimony of the two State Police detectives. In an evaluation of such proof the following principle is applicable: The quantum of proof in a criminal trial is different from and higher than that in proceedings before an administrative agency. In the former proof must establish guilt beyond a reasonable doubt; in the latter "it is only necessary to establish the truth of the charges by a preponderance of the believable evidence and not to prove guilt beyond a reasonable doubt." Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). See also In re Darcy, 114 N.J. Super. 454, 458 (App.Div. 1971).

From the totality of the evidence presented, it is apparent that the licensees engaged in bookmaking and gambling activities as an adjunct to their licensed business. The testimony of both State Police detectives was detailed, clear and convincing and vigorous cross examination did not reduce its effectiveness.

From the proofs adduced herein I conclude that the licensees' guilt of the charges has been established by a fair preponderance of the credible evidence, indeed by substantial and uncontroverted evidence. I therefore recommend that the licensees be found guilty of the charges herein.

As the licensees have no prior adjudicated record, it is recommended that the license be suspended for ninety days. Re Arthur Martin, Inc., Bulletin 2068, Item 4; Re Casale, Bulletin 2045, Item 4.

Conclusions and Order

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

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

Accordingly, it is, on this 9th day of March 1973,

ORDERED that Plenary Retail Consumption License C-348, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Henry Sydlar & Doris Sydlar, t/a First Ward Tavern, for premises 192 Grant Street, Jersey City, be and the same is hereby suspended for ninety (90) days, commencing at 2:00 a.m. Thursday, March 22, 1973 and terminating at 2:00 a.m. Wednesday, June 20, 1973.

ROBERT E. BOWER
DIRECTOR

9. APPELLATE DECISIONS - SILVER ROD STORES, ET ALS. v. JERSEY CITY - ORDER.

#3658, #3663)	
Silver Rod Stores, et als.,)	
)	
Appellants,)	
)	On Appeal
v.)	
)	O R D E R
Municipal Board of Alcoholic)	
Beverage Control of the City)	
of Jersey City, and Naples on)	
the Square, Inc.,)	
)	
Respondents.)	

-----)
Max & Koenig, Esqs., by Jacob E. Max, Esq., Attorneys for
Appellant Silver Rod Stores
Michael Halpern, Esq., Attorney for Appellants Terracini, Inc.
and Plaza Management Corp.
Waters, McPherson & Hudzin, Esqs., by Walter J. Hudzin, Esq.,
Attorneys for Respondent Naples on the Square, Inc.
No appearance on behalf of respondent Municipal Board.

BY THE DIRECTOR:

On October 13, 1972 Conclusions and Order were entered herein reversing the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City in granting a place-to-place transfer of a license issued to the respondent Naples on the Square, Inc., from premises 2871 Kennedy Boulevard to 16 Journal Square, Jersey City, based upon my finding that such transfer was in contravention of the applicable local ordinance; and affirming the action of the said Board in granting the transfer of the plenary retail consumption license from James D. Feinberg to Naples on the Square, Inc. expressly subject to the conditions set forth in the said order. Silver Rod Stores, et als. v. Jersey City, Bulletin 2077, Item 1.

An appeal was taken from my said order to the Appellate Division of the Superior Court, and on March 19, 1973 the said court entered an order dismissing the said appeal with the consent of all parties. Re Naples on the Square et al v. Silver Rod Stores, et al., Superior Court Appellate Division Docket A-455-72.

Naples on the Square, Inc., has now filed a verified petition supported by affidavit wherein it sets forth that it entered into an agreement, with James Feinberg for the transfer of the subject license then held by Feinberg for use by it in connection with its operation of a restaurant business which it conducts at 16 Journal Square, Jersey City. The agreement was expressly predicated upon and made subject to the approval by the Board of both the person-to-person and place-to-place transfer.

It alleges that at no time during the hearing on appeal was the exact nature of the contingency involved between the parties made known to the Hearer although the approval of the person-to-person transfer without the approval of the place-to-place transfer "would be of no value to...Naples on the Square, Inc." It further avers that "Had such indication been made as aforesaid, it is entirely probable that the person to person transfer would have also been reversed and the conditions made applicable to the approval of the person to person transfer might have been made applicable to the [then-licensee] James Feinberg."

The petitioner thus requests that the said license be "restored" to James Feinberg; that an order be entered reversing the action of the Board with respect to the person-to-person transfer and directing the Board to "cancel" the license issued to Naples on the Square, Inc., and reissue the same to James D. Feinberg for premises 2871 Kennedy Boulevard, subject to the same conditions as set forth in my Conclusions and Order.

By letter dated March 27, 1973 James Feinberg has advised me that he has no objection to such action. I am further advised by the attorney for the Board that the Board has no objection to such action, nor have I received any objection by any of the other parties thereto. Good cause appearing I shall enter an order in accordance with the relief prayed for in the said petition.

Accordingly, it is, on this 4th day of April 1973,

ORDERED that my Conclusions and Order dated October 13, 1972 be and the same is hereby reinstated in part, and amended as follows:

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City approving the place-to-place transfer of license issued to respondent Naples on the Square, Inc. for premises 2871 Kennedy Boulevard to 16 Journal Square, Jersey City, be and the same is hereby reversed; and it is further

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City in approving the transfer of plenary retail consumption license from James D. Feinberg to respondent Naples on the Square, Inc. be and the same is hereby reversed; and it is further

ORDERED that the Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and is hereby directed to vacate its resolution heretofore adopted approving the person-to-person transfer of the subject license from James D. Feinberg to Naples on the Square, Inc., and restoring the said license to James D. Feinberg; and it is further

ORDERED that the said license shall be retained in the custody of the respondent Board and shall not actually be issued to James D. Feinberg or become effective:

- (a) Unless and until the Board in its discretion and within three months from the date of this order or any extension of time thereafter granted by the Board therefor, approves the application of James D. Feinberg, to be promptly filed, for a place-to-place transfer to a lawful and suitable location;
- (b) Upon the approval of the said application for transfer of said license held in custody of the Board, the license shall then issue and shall be in full force and effect as soon as the transfer is endorsed on the face of the license certificate; and
- (c) In the event the said application for transfer is not approved and the transfer granted within the above stated period of time or any extension of time authorized by the Board, the said license shall, thereupon, be cancelled.

Robert E. Bower
Director

10. STATE LICENSES - NEW APPLICATION FILED.

Burns Beverage Company
425 North 37th Street
Pennsauken, New Jersey

Application filed April 23, 1973
for place-to-place transfer of
State Beverage Distributor's
License SBD-213 from Route #130 &
Hartford Road, Delran Township,
PO Riverside, New Jersey.


Robert E. Bower
Director