

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

BULLETIN 1954

March 5, 1971

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1. NEW LEGISLATION - AMENDMENT OF ALCOHOLIC BEVERAGE LAW  
(R.S. 33:1-22 and R.S. 33:1-31) - PROVISION FOR \$50.00  
APPEALS FILING FEE AND OFFERS IN COMPROMISE IN LIEU OF  
LICENSE SUSPENSIONS.

On January 18, 1971, Governor Cahill signed into law Assembly Bill No. 1210, which thereupon became Chapter 9 of the Laws of 1971, effective immediately. The new law amends R.S. 33:1-22 and R.S. 33:1-31 (bracketed language deleted and underscored language added) as follows:

33:1-22. If the other issuing authority shall refuse to issue any license, or if the other issuing authority shall refuse to extend said license for a limited time not exceeding its term, to the executor or administrator of a deceased licensee, or to such person who shall be appointed by the courts having jurisdiction, in the event of the incompetency of any licensee, the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application. Such applicant may within 30 days after the date of service or of mailing of such notice, upon payment to the director of a nonreturnable filing fee of \$50.00, appeal to the director from the action of the issuing authority. If the other issuing authority shall issue a license, or grant an extension of said license for a limited time not exceeding its term, to the executor or administrator of a deceased licensee, or to such person who shall be appointed by the courts having jurisdiction, in the event of the incompetency of any licensee, any taxpayer or other aggrieved person opposing the issuance of such license may, within 30 days after the issuance of such license, upon payment to the director of a nonreturnable filing fee of \$50.00, appeal to the director from the action of the issuing authority. The director shall fix a time for the hearing of the appeal and before hearing the same, shall give at least 5 days' notice of the time so fixed to such applicant, such taxpayer, or other aggrieved person and other issuing authority.

Where an appeal is taken from the denial of an application for a renewal of a license, the director may, in his discretion, issue an order upon the respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the term of the license pending the return of the order to show cause. If it shall appear upon the return of the order to show cause that the action of the respondent issuing authority is prima facie erroneous and that irreparable injury to the appellant would otherwise result, the director may, subject to such conditions as he may impose, order that the term of the license be extended pending a final determination of the appeal.

33:1-31. Any license, whether issued by the director or any other issuing authority, may be suspended or revoked by the director, or the other issuing authority may suspend or revoke any license issued by it, for any of the following causes:

- a. Violation of any of the provisions of this chapter;
- b. Manufacture, transportation, distribution or sale of alcoholic beverages in a manner or to an extent not permitted by the license or by law;
- c. Nonpayment of any excise tax or other payment required by law to be paid to the State Tax Commissioner;
- d. Failure to comply with any of the provisions of subtitle 8 of the Title Taxation (§54:41-1 et seq.);
- e. Failure to have at all time a valid, unrevoked permit, license or special tax stamp, or other indicia of payment, of all fees, taxes, penalties and payments required by any law of the United States;
- f. Failure to have at all times proper stamps or other proper evidence of payment of any tax required to be paid by any law of this State;
- g. Any violation of rules and regulations;
- h. Any violation of any ordinance, resolution or regulation of any other issuing authority or governing board or body;
- i. Any other act or happening, occurring after the time of making of an application for a license which if it had occurred before said time would have prevented the issuance of the license; or
- j. For any other cause designated by this chapter.

No suspension or revocation of any license shall be made until a 5-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him.

A suspension or revocation of license shall be effected by a notice in writing of such suspension or revocation, designating the effective date thereof, and in case of suspension, the term of such suspension, which notice may be served upon the licensee personally or by mailing the same by registered mail addressed to him at the licensed premises. Such suspension or revocation shall apply to the licensee and to the licensed premises.

A revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10% of the stock of a corporate licensee ineligible to hold or receive any other license, of any kind or class under this chapter, for a period of 2 years from the effective date of such revocation and a second revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10% of the stock of a corporate licensee ineligible to hold or receive any such license at any time thereafter. Any revocation may, in the discretion of the director or other issuing authority as the case may be, render the licensed premises ineligible to become the subject of any further license,

of any kind or class under this chapter, during a period of 2 years from the effective date of the revocation.

The director may, in his discretion and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may in the discretion of the director be proper under the circumstances in lieu of any suspension of any license by the director or any other issuing authority. Any sums of money so collected by the director shall be paid forthwith into the State Treasury for the general purpose of the State.

No refund, except as expressly permitted by section 33:1-26 of this Title, shall be made of any portion of a license fee after issuance of a license; but if any licensee, except a seasonal retail consumption licensee, shall voluntarily surrender his license, there shall be returned to him, after deducting as a surrender fee 50% of the license fee paid by him, the prorated fee for the unexpired term; provided, that such licensee shall not have committed any violation of this chapter or of any rule or regulation or done anything which in the fair discretion of the director or other issuing authority, as the case may be, should bar or preclude such licensee from making such claim for refund and that all taxes and other set-offs or counterclaims which shall have accrued and shall have become due and payable to this State or any municipality, or both, have been paid. Such refund, if any, shall be made as of the date of such surrender. The surrender of a license shall not bar proceedings to revoke such license. The refusal of the other issuing authority to grant any refund hereunder shall be subject to appeal to the director within 30 days after notice of such refusal is mailed to or served upon the licensee. Surrenders of retail licenses shall be promptly certified by the issuing authority to the director. Surrender fees shall be accounted for as are investigation fees. If any licensee to whom a refund shall become due under the provisions of this section shall be indebted to the State of New Jersey for any taxes, penalties or interest by virtue of the provisions of subtitle 8 of the Title Taxation (§54:41-1 et seq.), it shall be the duty of the issuing authority before making any such refund, upon receipt of a certificate of the State Tax Commissioner evidencing the said indebtedness to the State of New Jersey, to deduct therefrom, and to remit forthwith to the State Tax Commissioner the amount of such taxes, penalties and interest.

In the event of any suspension or revocation of any license by the other issuing authority, the licensee may, within 30 days after the date of service or of mailing of said notice of suspension or of revocation, upon payment to the director of a nonreturnable filing fee of \$50.00, appeal to the director from the action of the other issuing authority in suspending or revoking such license which appeal shall act as a stay of such suspension or revocation pending the determination thereof unless the director shall otherwise order. When any person files with any other issuing authority written complaint against a licensee specifying charges and requesting that proceedings be instituted to revoke or suspend such license, he may appeal to the director from its refusal to revoke or suspend such license or other action taken by it in connection therewith within 30 days from the time of service upon or mailing of notice to him of such refusal or action. The director shall thereupon fix a time for the hearing of the appeal and before hearing the same shall give at least 5 days' notice of the time so fixed to such licensee, other issuing authority and appellant.

This act shall take effect immediately.

RICHARD C. McDONOUGH  
DIRECTOR

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

In the Matter of Disciplinary  
Proceedings against

THE BLUE DOOR TAVERN, INC.  
7 Union Place  
Summit, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption  
License C-5, issued by the Common  
Council of the City of Summit.

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Goldhor, Meskin & Ziegler, Esqs., by Sanford A. Meskin, Esq.,  
Attorneys for the licensee.

Edward F. Ambrose, Esq., Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On March 3 and 6, 1970, 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'; in violation of Rule 7 of State Regulation No. 20.

"2. On March 3 and 6, 1970, 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; in violation of Rule 6 of State Regulation No. 20."

The Division's case was presented through the testimony of two New Jersey State Police officers who pursued a special assignment to investigate alleged gambling activities at the licensed premises.

The testimony of State Police Officer Emil Moaba, which was corroborated by his assistant, John E. Leck, presents the following picture: In the company of Leck, Moaba visited the licensed premises on March 3 and 6, 1970, the dates alleged in the said charges. Both troopers had considerable experience in the investigation of gambling and horse race betting activity, and were familiar with numbers bets. While Moaba's experience was more limited, Leck had been a State Trooper for 13 years and during the past 2 years had concentrated on bookmaking, lottery and card playing investigations, as a member of the Criminal Investigation Section of the New Jersey State Police.

Moaba and Leck entered the premises on March 3rd at approximately 10:45 a.m.; Moaba noted that one Alonzo Petty was seated at the bar. Petty was known to both officers, since they had placed bets with him on prior occasions. Leck stated that he had placed bets with him on at least five occasions and he was known to both officers as a lottery operator, otherwise known as a "bookie".

Moaba walked over to where Petty was seated and in a loud, booming voice ordered a drink from the bartender, identified as Thomas Dowling. At the same time he placed a bet with Petty by giving him a slip of paper plus one dollar, telling him that he was playing "542 again for a dollar". The bet was made while Dowling poured his drink and was just about one and a half feet away from him. The witness has a particularly loud voice which he calls "an Irish whisper". The transaction was an open transaction executed right over the bar; in his words, "There was nothing to hide. There was no need to hide anything. Everything was, as far as I was concerned, wide open." While he was placing the bet, Leck was seated at the bar a short distance away from him. When Moaba purchased the drink for Petty, he told him, "Now, if I hit, I want to get paid", to which Petty replied, "Don't worry. I'll take care of it." Shortly after placing the bet, the officers left the tavern.

They returned on their final visit on March 6th. Following their pre-arranged procedure, Leck entered the tavern first and, at about 1:35 p.m., Moaba entered. Immediately thereupon, Moaba noted that Petty was seated in his usual position near the end of the bar facing the window. Leck placed himself near the center of the bar. Moaba walked over to Petty, seated himself at the bar and ordered a drink. He then handed Petty a slip of paper with the number 542 and placed a bet with him for "one dollar straight." Petty then inquired, "Why don't you play the number all week?"; to which he replied, "Because I may want to change my mind."

During this betting activity, the bartender (Dowling) was in the area within 12 feet, and again this witness spoke to Petty in a "very booming voice" so that it could be heard by everyone in the general area. Shortly after placing the bet, he left the tavern and Leck, who remained a short while after that, left the premises.

On cross examination, Moaba denied that Petty was drunk on any of these occasions, and certainly was sober on March 6th. He recalled that he purchased beer for Petty and in his judgment and observation, Petty's condition was no different than it had been on the three times prior to March 3rd when he had placed bets with him. He also insisted that his voice could be heard because "I normally speak in a loud voice. I have an Irish whisper, as they call it, and no one has had problems hearing me in a bar." He asserted that his betting was done in full view of the bar so that Dowling who was in the general area where the betting activity took place, would have had no difficulty in observing and hearing the said activity.

As noted above, Leck was in a position to observe the bets made by Moaba on both occasions; heard Moaba make the bets; saw Petty receive the slips and the money, and noted that Dowling was nearby when these bets were placed.

This witness added that the slips which Moaba handed to Petty had been prepared in advance in the presence of this witness, so that he knew that these were slips containing numbers bets.

Thomas Dowling, testifying on behalf of the licensee, gave the following account: He had been employed at the licensed premises since February 16, 1970. He actually had no recollection of what transpired on March 3rd because "I vaguely

remember the date in question." Since he does not recall that particular date, he could not state whether or not these officers were in the premises at that time.

He explained that Petty was unemployed and usually was in the licensed premises all day. He would bring a cup of tea from the diner next door into the barroom, and sit at the bar where he would watch TV or read a book. Petty also drink liquor.

He recalled that on March 6th Petty came into the premises at about 9 a.m. and sat at the bar for about four and a half hours. When he came into the tavern he was intoxicated and was drunk during his entire stay there, although the witness insists that he did not serve any alcoholic beverages to Petty that morning. Nevertheless, after staggering into the tavern, he sat at the bar and didn't move during the entire time. Several of his friends tried to awaken Petty and urged him to go home but they were apparently unsuccessful. He "was just dozing."

The witness did not see either Moaba or Leck in the premises on March 6th prior to the time that the raid was conducted of the premises by New Jersey State Police at approximately 1:30 p.m. Nor did he see Moaba place any bet with Petty or Petty accept any money or bets from Moaba on either March 3rd or March 6th.

On cross examination, he admitted that his eye sight was good, his hearing was good, but that he did not hear Moaba in any conversation with Petty. Finally, he denied any knowledge of any alleged betting activity by Petty, did not know that he was a "bookie", was not interested in whether Petty had any income or employment, and never got into any conversation with him with respect thereto because it was "None of my business".

Morris Moskowitz, the principal officer and stockholder of the corporate licensee, was summoned to the premises during the search by the State troopers. He stated that they made a complete search of his premises and no slips of paper reflecting numbers bets were found on the premises.

Moaba, on rebuttal, denied that Petty was intoxicated and insisted that although he may have had a couple of drinks on March 6th, he was sober. Petty on that occasion, "walked out by himself, got into the car by himself, was arraigned in the Summit (Municipal) Court before the judge, and when I left, was making arrangements to post bail."

A motion was made by the attorney for the licensee at the conclusion of the Division's case, to dismiss the first charge which alleges that the licensee "allowed, permitted and suffered gambling, ....viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20." He argued that, while Rule 7 refers to gambling, it also mentions other illegal activity for which the licensee is not charged. The attorney for the Division, on the other hand, maintained that lottery or numbers activity is gambling. Rule 7 in pertinent part states:

"No licensee shall engage in or allow, permit or suffer any pool-selling, bookmaking, or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind...."



It is clear that this rule is applicable where the placing of numbers bets is involved. The alleged gambling activity, furthermore, may also be chargeable under Rule 6 of State Regulation No. 20, and as the attorney for the Division pointed out, it is the usual practice to bring these charges under both rules although the Division considers both charges as one violation for penalty purposes.

I, therefore, recommend that the motion to strike the first charge be denied.

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).

I have carefully analyzed and evaluated the testimony herein, and have had the opportunity to observe the demeanor of the witnesses as they testified at this hearing. Thus, in appraising the factual picture presented, I have assessed the credibility of the witnesses. Testimony to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

Bearing these principles in mind, I am persuaded that the version presented by the two State troopers was forthright, credible and accurately depicted what transpired during their presence in the licensed premises on the dates alleged herein. Moaba has a booming voice which he terms an "Irish whisper". One would have to be very hard of hearing, indeed deaf, not to hear him when he talks. He stated that he placed the bets with Petty in an open, across-the-bar manner, so that the bartender could not have had any difficulty in hearing what had transpired. In addition, on March 3rd, he places the bartender about one and a half or two feet away from him while the actual bet was negotiated with Petty.

Additionally, both State troopers testified that they knew Petty as a bookie and had placed bets with him on at least three prior occasions. The denial by Dowling does not have the ring of truth. So far as the incident on March 3rd is concerned, Dowling frankly admits that he had no present recollection of what, if anything, transpired on that day. Thus, he did not, nor could he, contradict the testimony of the Division's witnesses with respect thereto. So far as the March 6th incident was concerned, his denial that the troopers were even in the premises prior to the confrontation and raid that occurred later that afternoon, is wholly incredible.

Furthermore, his discription of Petty as being totally intoxicated on the morning of March 6th does violence to common experience. He alleges that he permitted this intoxicated person to be seated at his bar for four and a half hours without taking steps to remove him from the premises. This seems to be a story woven out of whole cloth. The fact that Petty spent all day in this tavern every day, must clearly have given rise to the



suspicion that his presence was not for the purpose of patronage but rather for a purpose as testified to by the Division's witnesses. In any event, I do not believe that Dowling did not hear or see this activity.

The pertinent part of the rule is to the effect that no licensee shall allow, permit or suffer in or upon his premises any of the prescribed activities. It is not enough for a licensee or its employees to state that they did not hear or see such activity take place, because licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3. Notwithstanding the fact that the bartender or the licensee did not personally engage in the betting activity, the rule is well settled, as stated in Re Llewellyn Recreation Center, Bulletin 1146, Item 1:

"....it is not essential that the corporate-licensee's officers or employees should be personally implicated in the gambling activities or have knowledge thereof in order to find guilt. Re Bressler, Bulletin 1091, Item 5." Cf. Renee's Bar & Liquor Store, Inc., Bulletin 1929, Item 2.

Accordingly, I find that under the facts and circumstances herein, the licensee, through its employee, allowed, permitted and suffered gambling in and upon licensed premises, namely the making and accepting of bets in a lottery, and allowed, permitted and suffered tickets in a lottery, commonly known as numbers bets, to be sold or offered for sale as set forth in the charges herein. I conclude that the Division has established the truth of these charges by a fair preponderance of the believable evidence. Accordingly, it is recommended that an order be entered finding the licensee guilty of the said charges.

Licensee has no prior adjudicated record. It is, further, recommended that an order be entered suspending the license for sixty days. Re Renee's Bar & Liquor Store, Inc., supra.

#### Conclusions and Order

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

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

Accordingly, it is on this 28th day of December, 1970

ORDERED that Plenary Retail Consumption License C-5, issued by the Common Council of the City of Summit to the Blue Door Tavern, Inc., for premises 7 Union Place, Summit be and the same is hereby suspended for sixty (60) days commencing at 12:01 a.m. Monday, January 4, 1971 and terminating at 12:01 a.m. Friday, March 5, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION INTO STATE WITHOUT SPECIAL PERMIT - ALCOHOLIC BEVERAGES RETURNED TO UNWITTING VIOLATOR ON CONDITION VALIDATING PERMIT BE OBTAINED AND NEW JERSEY BEVERAGE TAX PAID.

In the Matter of the Seizure	)	
on July 3, 1970 of a quantity	)	CASE NO. 12,355
of alcoholic beverages on the	)	ON HEARING
corner of Elm and Main Avenue,	)	CONCLUSIONS
Sterling, Passaic Township,	)	AND ORDER
County of Morris and State of	)	
New Jersey.	)	

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 Bohdan D. Fedasiuk, Pro se  
 Harry D. Gross, Esq., appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 to determine whether a quantity of taxpaid alcoholic beverages and one bottle of Heinz Vinegar described in a schedule attached hereto and made a part hereof seized on July 3, 1970 at the intersection of Elm Street and Main Avenue, Sterling, Passaic Township, New Jersey, constitutes unlawful property and should be seized.

The seizure was made by members of the Passaic Township police department. This matter was subsequently adopted by the Alcoholic Beverage Control Division.

At the hearing herein, Bohdan D. Fedasiuk appeared and sought return of the seized alcoholic beverages.

There was entered into evidence an Alcoholic Beverage Control Division file which included the report of the Alcoholic Beverage Control agents, the certificate by the Director that no alcoholic beverage license or special permit of any kind was ever issued to Bohdan Fedasiuk, an inventory of the seized items, the affidavit of mailing and the affidavit of publication.

The reports of Alcoholic Beverage Control agents indicate that on July 3, 1970 Officer E and Detective H of the Passaic Township Police Department detained Mr. Fedasiuk at the corner of Elm Street and Main Avenue, Sterling, Passaic Township while driving a 1966 Opel. They observed a considerable quantity of alcoholic beverages on the front and back seats of the car.

Mr. Fedasiuk was then arrested and charged with a violation of R.S. 33:1-2.

Mr. Fedasiuk gave the following account: He is presently employed as a mechanical engineer in charge of maintenance and security by the Hoerst Pharmaceutical Company, Bridgewater Township, New Jersey; that he presently lives in Berkeley Heights, New Jersey; and that his company has temporarily located him in Cincinnati where he has been for some months. He testified that on the date in question he was driving from Cincinnati, Ohio to his home with the quantity of alcoholic beverages seized. He

continued that he had purchased the items in Cincinnati over the period of time he had been located there; that he had purchased the items for his own consumption and also for friends. He readily admitted that he had transported the quantity of alcoholic beverages as charged, but that he had no knowledge that there was any law limiting the quantity of alcoholic beverages which may be transported for personal use nor that any special permit was required for such transportation.

On cross examination he testified that his permanent address is Berkeley Heights, New Jersey; that his family resides there; that his temporary relocation in Cincinnati has ended; that he has been in the United States since 1950 having come from Ukraine; that he has been a mechanical engineer since 1960; that he knew it was illegal to transport alcoholic beverages in this manner for business purposes but that he had no idea that it was illegal if done for personal consumption.

Wolodymyr Klachko, testified on behalf of the claimant that he is the brother-in-law of the claimant, that he is a college professor; that he is in close personal contact with the claimant; that the claimant is building a bar in his home and that the claimant bought the seized alcoholic beverages for his personal use.

The seized alcoholic beverages constitute unlawful property and are subject to seizure R.S. 33:1-2, R.S. 33:1-1(y), R.S. 33:1-66.

Having heard the testimony of the claimant and his evidence I am satisfied from his demeanor and forthrightness that Mr. Fedasiuk was in fact transporting the alcoholic beverages from Cincinnati to his home in Berkeley Heights for his own personal consumption and for the use of certain friends. I am satisfied that Mr. Fedasiuk had no intention of selling this merchandise nor was he aware of the statutory requirement of making application to the Director for a special permit. R.S. 33:1-2.

There is no question that the claimant violated the law in transporting a quantity of alcoholic beverages into this State in excess of the legal limit and with a special permit so to do. Indeed, considering the candid admission of the claimant this hearer could arrive at no other conclusion. However, the claimant has no prior record of similar violation. Further, I am completely satisfied that the claimant had no knowledge that he was violating the law.

The Director upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of R.S. 33:1-66, has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable cost incurred in connection with the seizure. See also Rule 3 of State Regulation No. 28.

I therefore recommend that the seized alcoholic beverages be returned to the claimant upon his proper application for a beverage permit with payment of \$25.00 and upon further payment of \$46.28 New Jersey Beverage tax at the rate of \$2.30 per gallon for the 20.12 gallons of alcoholic beverages.

Conclusions and Order

No exceptions were taken to the Hearer's Report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 29th day of December, 1970,

DETERMINED and ORDERED that, if within 30 days of the date of this Order, Bohdan D. Fedasiuk obtains a validating permit subject to a fee of \$25.00, and further pays the New Jersey Beverage Tax due thereon in the sum of \$46.28, the seized alcoholic beverages set forth in Schedule "A" shall be returned to him.

RICHARD C. McDONOUGH  
DIRECTOR

SCHEDULE "A"

108 - containers of alcoholic beverages  
1 - bottle of Heinz vinegar

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS - EFFECTIVE DATES OF SUSPENSION DEFERRED.

In the Matter of Disciplinary )  
Proceedings against )  
Nehemia Lodge No. 192 Improved )  
Benevolent and Protective Order )  
Elks of the World, )  
146 and 148 West Spicer Avenue )  
Wildwood, N. J., )  
Holder of Club License CB-2 (for the )  
1969-70 and 1970-71 license periods), )  
issued by the Board of Commissioners )  
of the City of Wildwood. )  
----- )

CONCLUSIONS

and

ORDER

No Appearance on behalf of Licensee  
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein.

Hearer's Report

The following charges were preferred against the licensee:

- "1 On August 27, 1969, and on divers days prior thereto, 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 on horse races and further on said date of August 27, 1969, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, memoranda and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.

2 On August 27, 1969, and on divers days prior thereto, 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 further on said date of August 27, 1969, you possessed, had custody of and 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."

The matter was set for hearing on October 15, 1970 after numerous adjournments by the Division due to the failure of the licensee to respond or communicate with the Division in any manner. The licensee did not appear nor has it communicated with the Division in any manner to the date of this report. Accordingly, the hearing was held and proof was presented ex parte.

It should be noted that the Division records indicate the license in question was renewed on July 1, 1970 for the current year.

At the hearing on October 15, 1970 the Division presented the testimony of Detective Hoffman of the New Jersey State Police, who testified as to his knowledge, experience, background and expertise in the field of illegal gambling, particularly horse race bets and lottery or numbers betting.

He testified that on August 27, 1969, armed with a proper search warrant, he proceeded to investigate the licensed premises in the company of other members of the State Police, ABC Agent G and Detective Matthews of the Cape May County Prosecutor's office.

A copy of the search warrant and accompanying affidavit was admitted into evidence: The affidavit made by Detective Hoffman of the State Police indicated that extensive surveillance of the licensed premises by certain State police officers resulted in probable cause to believe that the illegal practice of book-making and lottery clearly existed.

Detective Hoffman testified that upon entering the premises in the company of the persons above enumerated, he read the search warrant to a Mr. Beaman, the manager of the licensed premises and the Exalted Ruler of the Lodge. The search of the premises revealed two horse race betting slips lying next to the cash register. These were entered into evidence and described in detail by Detective Hoffman. Further search disclosed a waste basket under the bar which contained numerous horse and numbers bets slips, fourteen of which were entered into evidence.

Detective Hoffman further testified that numbers betting slips were found in the coin box of the juke box on the premises, including thirty numbers slips and twenty-three horse bet slips.

As a result of the search, Mr. Beaman and one Shirley Mae Henley, who assisted Mr. Beaman, were placed under arrest. Both denied any knowledge of any betting activity on the licensed premises.

Agent G testified and substantially corroborated the testimony of Detective Hoffman.

I conclude that the Division has established the truth of the charges by a fair preponderance of the evidence and recommend that the licensee be found guilty as charged.

The licensee has no prior record of suspension. I recommend that the license be suspended for sixty days. Re Romano, Bulletin 1937, Item 3.

Conclusions and Order

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

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

Report of investigation discloses that the licensed business has discontinued its customary summer operation at the end of August, 1970 and will re-open for business at the commencement of the 1971 summer season. Hence, the imposition of the penalty to take effect at the present time would be nugatory; therefore the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the business under the renewal license for the summer season of 1971 shall have fully resumed on a substantial basis.

Accordingly, it is, on this 24th day of December 1970,

ORDERED that Club License No. CB-2, issued by the Board of Commissioners of the City of Wildwood to Nehemia Lodge No. 192, Improved Benevolent and Protective Order Elks of the World, for premises 146 and 148 West Spicer Avenue, Wildwood, be and the same is hereby suspended for sixty (60) days, the effective dates of such suspension to be fixed by further order as aforesaid.

RICHARD C. McDONOUGH  
DIRECTOR

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

In the Matter of Disciplinary  
 Proceedings against

MONTAUK BAR (A Corporation)  
 t/a Montauk Bar  
 248-250 Madison Street  
 Passaic, N. J.

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption  
 License C-9, issued by the Municipal  
 Board of Alcoholic Beverage Control of  
 the City of Passaic for the 1969-70  
 licensing period and extended by the  
 Director of the Division of Alcoholic  
 Beverage Control for the 1970-71  
 licensing period pending determination of  
 an appeal from denial by said Municipal  
 Board of Alcoholic Beverage Control of  
 application for renewal of said license  
 for the 1970-71 licensing period.

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 Hammer & Hammer, Esqs., by David H. Hammer, Esq., Attorneys for  
 Licensee  
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on  
 October 21, 1970, it possessed alcoholic beverages in two  
 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  
 fifteen days, with remission of five days for the plea entered,  
 leaving a net suspension of ten days. Re Emjam, Inc., Bulletin  
 1935, Item 4.

Accordingly, it is, on this 8th day of January 1971,

ORDERED that Plenary Retail Consumption License C-9,  
 issued by the Municipal Board of Alcoholic Beverage Control of  
 the City of Passaic to Montauk Bar (A Corporation), t/a Montauk  
 Bar, for premises 248-250 Madison Street, Passaic for the 1969-70  
 licensing period and extended by the Director of the Division  
 of Alcoholic Beverage Control for the 1970-71 licensing period  
 pending determination of an appeal from denial by said Municipal  
 Board of Alcoholic Beverage Control of application for renewal of  
 said license for the 1970-71 licensing period, be and the same  
 is hereby suspended for ten (10) days, commencing at 3:00 a.m.  
 Monday, January 25, 1971, and terminating at 3:00 a.m. Thursday,  
 February 4, 1971.

RICHARD C. McDONOUGH  
 DIRECTOR



In the Matter of Disciplinary  
Proceedings against

ST. ROCCO SOCIETY  
23 Anderson St.  
Raritan Borough (Somerset Co.) N.J.

## CONCLUSIONS AND ORDER

Holder of Club License CB-1, issued by the Mayor and Council of the Borough of Raritan.

Champi, Graham & Yuresko, Esqs., by Stephen R. Champi, Esq.,  
Attorneys for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

Licensee pleads non vult to charges alleging that on or about June 11, 1970 it (1) sold bottles of alcoholic beverages except for consumption on the licensed premises, in violation of Rule 9 of State Regulation No. 7, (2) sold alcoholic beverages for which no schedule of minimum resale prices and labels had been filed with the Director of the Division of Alcoholic Beverage Control, in violation of Rule 1 of State Regulation No. 30, and (3) aided and abetted in unlicensed transportation of alcoholic beverages contrary to R.S. 33:1-2, in violation of R.S. 33:1-52.

Absent prior record, the license will be suspended on the first and second charges for twenty-five days (cf. Re Guiseppi Garibaldi Lodge #1568, Bulletin 1578, Item 6), and on the third charge for ten days (cf. Re Helmer Bros., Inc., Bulletin 1613, Item 4), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 8th day of January 1971,

ORDERED that Club License CB-1, issued by the Mayor and Council of the Borough of Raritan (Somerset County) to St. Rocco Society, for premises 23 Anderson St., Raritan Borough, be and the same is hereby suspended for thirty (30) days, commencing at 1:00 a.m. Monday, January 25, 1971, and terminating at 1:00 a.m. Wednesday, February 24, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - LICENSE  
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

GARFIELD MEMORIAL POST NO. 255  
AMERICAN LEGION  
163 Cedar Street  
Garfield, N. J.

CONCLUSIONS  
AND ORDER

Holder of Club License CB-2, issued  
by the Mayor and Council of the City  
of Garfield.

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Licensee, by Gerard DeMuro, Judge Advocate  
Francis P. Meehan, Jr., Esq., Appearing for Division

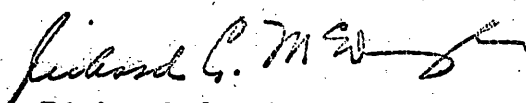
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
October 31, 1970, it sold drinks of beer to non-members, in  
violation of Rule 8 of State Regulation No. 7.

Absent prior record, the license will be suspended for  
fifteen days, with remission of five days for the plea entered,  
leaving a net suspension of ten days. Re Cranbury Vikings &  
Sportsmen's Club, Inc., Bulletin 1893, Item 5.

Accordingly, it is, on this 8th day of January 1971,

ORDERED that Club License CB-2, issued by the Mayor  
and Council of the City of Garfield to Garfield Memorial Post  
No. 255 American Legion for premises 163 Cedar Street, Garfield,  
be and the same is hereby suspended for ten (10) days,  
commencing at 3:00 a.m. Monday, January 25, 1971, and terminating  
at 3:00 a.m. Thursday, February 4, 1971.

  
Richard C. McDonough  
Director