

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

BULLETIN 2078

January 16, 1973

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1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary Proceedings  
against the following licensees:

CONCLUSIONS  
AND ORDERS

- A. G.M.K., Inc. t/a Henry's Tavern S-9304  
3801 Pacific Ave., Wildwood. Lic: C-48  
Charge: Sale to minor, 19 - Fine of \$600 in lieu of 15 day  
suspension- Order: October 26, 1972.
- B. Morrow's Cafe, Inc. S-9312  
Woody's Corner, 102-104 E. 18th Ave., North Wildwood Lic: C-9  
North Wildwood  
Charge: Sale to minor, 18- Fine of \$400 in lieu of 10 day  
suspension - Order: October 26, 1972.
- C. Di Renzo Liquors, Inc. t/a Blackwood Liquor Store S-9333  
75 S. Black Horse Pike, Gloucester Twp., PO Blackwood Lic: D-2  
Charge: Sale to minor, 20 - Fine of \$750 in  
lieu of 5 day suspension.- Order: Oct. 26, 1972.
- D. Carson Liquors, Inc. t/a Freddy's Liquor Shop S-9315  
570 W. Cuthbert Rd. PO West Collingswood Lic: D-4  
Haddon Twp. Charge: Sale to other retailer on non-  
delivery list - fine of \$1,000 in lieu  
of 10 day suspension - Order: October 26, 1972.
- E. Peter Chowansky S-9326  
390 Main St. Paterson Lic: D-42  
Charge: Sale less than filed price - fine of \$200 in lieu  
of 5 day suspension - Order: October 24, 1972.
- F. Laurann Liquor & Delicatessen, Inc. S-9331  
551 Ocean Ave., Jersey City Lic: D-1  
Charge: 'Hours' Regulation - fine of \$600 in lieu of 15 day  
suspension - Order: October 26, 1972.
- G. J&R Tavern, Inc. Mun. Rev. 5490  
522 Central Ave., Jersey City Lic: C-385  
Charge: local 'Hours' violation - fine of \$400 in  
lieu of 10 day suspension - Order: October 30, 1972.
- H. Frederick & Frances Sheffield t/a Joe's Place S-9273  
205 Ackerman Ave., Clifton Lic: C-43  
Charges: (1) permitted dangerous substances on premises  
(2) permitted premises to become a nuisance  
(3) employed a disqualified person  
Prior record of permitting criminal on premises  
Suspension of 76 days net - Order: Nov. 1, 1972  
Suspension effective 11/7/72.
- I. The Arctic Corporation t/a Club Esquire S-9279  
n/w cor. Spicer & Arctic Aves. Wildwood Lic: C-38  
Charge: Sale to two minors, both 18 - Prior similar record  
within 5 years- fine of \$800 in lieu of 20 day  
suspension - Order: October 3, 1972.

- J. Tomlo, Inc. t/a LBJ Bar S-9259  
 617 So. 11th St. Newark Lic: C-390  
 Charges: (1) Failed to indicate 'Front' situation  
 (2) Permitted another to derive benefits from license  
 (3) Failed to keep books  
 License suspended for balance of term or until correction  
 not sooner than 25 days - Order: October 4, 1972  
 suspension effective -10/13/72.
- K. Mystic Island Cooperative Association S-9329  
 10-12 Pilsudski Way, Little Egg Harbor Twp., PO Tuckerton Lic: CB-2  
 Charge: Sale to non-members - Suspension for  
 10 days- Order: October 4, 1972  
 suspension effective 10/10/72
- L. Fred Wyatt t/a Sam's Bar S-9250  
 1600 So. 6th St., Camden Lic: C-107  
 Charge: 'Front' - Suspension for balance of term  
 with leave to lift after 25 days - Order: Oct. 5, 1972  
 suspension effective 10/13/72
- M. American Legion Post #206, S-9322  
 264 Washington Ave. Westwood Lic: CB-3  
 Charge: Sale to non-members - Suspension for 10 days -  
 Order: October 5, 1972 - suspension effective 10/17/72
- N. Veterans of Foreign Wars Post 2519 S-9313  
 71 Ford Rd., Denville, Lic: CB-5  
 Charge; Sale to non-members - Suspension for 10 days -  
 Order: October 5, 1972- Suspension effective 10/17/72
- O. Norwood at Avon, Inc. S-9187  
 Second & Norwood Aves, Avon-by-the-Sea Lic:(seasonal)  
 Charges: 'Front' and purchase from improper CS-3  
 source -Suspension for balance of term with leave  
 to lift after 27 days of present term and 17 days of  
 renewed term - Order: Oct. 3, 1972- suspension  
 effective 10/4/72
- P. Albert M. and Georgia M. Modrow t/a Willow Tavern S-9287  
 6-12 Willow St. Bloomfield Lic: C-19  
 Charge: Mislabeled 4 bottles - fine of \$1,350 in  
 lieu of 15 day suspension -Order: Oct. 10, 1972
- Q. A & T Tavern, Inc. S-9296  
 369 Grand St. Jersey City Lic: C-89  
 Charge: 'Hours' Regulation - prior similar record within 5 years -  
 fine of \$1,000 in lieu of 25 day suspension -  
 Order: October 10, 1972.
- R. Lucky Horseshoe Tavern S-9318  
 263 White Horse Pike, Clementon Lic: C-3  
 Charge: Sale to minor, 19 - Fine of \$400 in lieu of 10 day  
 suspension - Order: October 11, 1972.
- S. Nick Tally, Inc. S-9065  
 12 No. Missouri Ave. Atlantic City Lic: C-131  
 Charge: Purchase from an unauthorized source -  
 2 prior suspensions within past 5 years on dissimilar  
 offenses- suspension of 20 days effective 10/14/72  
 Order: October 11, 1972.

- T. A. Hooper, Inc. S-9203  
620 Springfield Ave. Newark Lic: C-111  
Charge: Mislabeling 4 bottles - fine of \$600 in lieu of 15 day  
suspension - Order: October 11, 1972.
- U. Henry D'Alessandro t/a Henry's Tavern S-9226  
34 South Valley Rd., West Orange Lic: C-29  
Charge: Mislabeling 2 bottles - prior similar record within 10  
years -dissimilar record within 5 years - suspension of  
20 days effective 10/25/72 - Order: October 12, 1972.
- V. Karon Inc. t/a Kazan's Liquor Store S-9301  
n/si Sherman Ave, Carmel, PO RD#1- Millville Lic: D-1  
Charge: Sale to minor, 19 - suspension of 10 days (Deerfield Twp),  
effective 10/24/72 - Order: October 12, 1972.
- W. Veterans of Foreign Wars Post 1953 S-9314  
Ramsey Ave & Francis Pl., Keansburg Lic: CB-2  
Charge: Sale to non-members - suspension of 10 days effective  
10/24/72 - Order: October 12, 1972.
- X. Clarence's Music World, Inc. S-9284  
47 Pennington St. Newark Lic: C-347  
Charge: Mislabeling 2 bottles -prior dissimilar record within  
5 years - fine of \$200 in lieu of 15 day suspension -  
Order: October 13, 1972.
- Y. Prince's Little Spot, Inc. S-9302  
White Horse Pk & Harvard Ave. Somerdale Lic: C-3  
Charge - Sale to minor, 17 - Fine of \$1,125 in lieu of 15 day  
suspension - Order: October 13, 1972.
- Z., Vincent Roche & James Broderick t/a Uncle Sam's S-9262  
Route 22, PO Whitehouse Station Lic: C-7  
Charge: Sale to two minors both 20 - fine of (Readington Twp)  
\$200 in lieu of 5 day suspension - Order: October 13, 1972.
- AA. Roy Green S-9285  
273 Grand St. Jersey City Lic: C-121  
Charge: 'Hours' Regulation - license suspended for 10 days  
effective 10/30/72 - Order: October 18, 1972
- AB. Peppi Corporation t/a Terminal Cafe S-9323  
221 West Oak Ave., Wildwood Lic: C-3  
Charge: Sale to minor, 18 - fine of \$400 in lieu of 10 day  
suspension - Order: November 8, 1972.
- AC. The Barone Corporation S-9330  
Somers Point Shopping Center, Somers Point Lic: C-17  
Charge: Sale to minor, 20 - fine of \$200 in lieu of 5 day  
suspension - Order: November 8, 1972
- AD. Melrose, Inc. S-9308  
144 Garfield Ave., Wildwood Lic: C-21  
Charge: Sale to minor, 18 - license suspended 10 days  
Order: Nov. 9, 1972- effective date deferred.
- AE. Jim's Cork 'N Bottle Liquor Store S-9325  
State Hwy. 35 & Boston St. Neptune City Lic: D-2  
Charge: Sale to minor, 19- license suspended 10 days -  
Order: November 10, 1972- suspension effective 11/27/72
- AF. Midland Park Restaurant Associates, Inc. t/a Steve's Wortendyke Inn. S-9211  
34 Central Ave. Midland Park Lic: C-2  
Charges: local 'hours' violation and permitting  
foul language - fine of \$3,400 in lieu of 20 day  
suspension - Order: November 13, 1972.

- AG. Grand Union Company S-9320  
Route 4 and the Boulevard, East Paterson Lic: D-12  
Charge: Sale at less than filed price - fine in lieu of 5 day  
suspension of \$450 - Order: November 15, 1972.
- AH. 3121 Westfield Avenue Corporation t/a Stockton Liquors S-9317  
3121 Westfield Ave., Camden Lic: C-155  
Charge: Sale to a minor, 17- prior similar record within 5 years-  
License suspended 32 days effective 11/28/72 -  
Order: November 15, 1972.
- AI. Peter L. Kaminskis t/a Colony Cocktail Lounge S-9360  
215 South 3rd St. Harrison Lic: C-5  
Charge: 'Hours' regulation - prior dissimilar offense  
within past 5 years - license suspended for  
15 days effective 11/28/72 - Order: Nov. 15, 1972.
- AJ. Delores Realty Co. Inc. t/a Walsh's Clover Leaf Bar & Grill S-9351  
132 South Broadway, South Amboy Lic: C-7  
Charge: Mislabeling six bottles - license suspended for  
20 days effective 11/28/72 - Order: Nov. 15, 1972.
- AK. Guidette-Rogalski Wase Post 3549 VFW S-9359  
527 Valley Brook Ave., Lyndhurst Lic: CB-10  
Charge; Sale to non-members -license suspended 10 days  
effective 11/29/72 - Order: November 16, 1972.
- AL. Joseph Angellino t/a The Surf Lounge S-9346  
47 Matilda Ter., Long Branch Lic: C-60  
Charge: Mislabeling 3 bottles - fine of \$400 in lieu of  
15 day suspension - Order: November 20, 1972.
- AM. Hysley Enterprises t/a Windmill Inn S-9272  
339 North 6th Ave., Lindenwold Lic: C-3  
Charge: Sale to minor, 19 - fine of \$400 in lieu of 10  
day suspension - Order: November 20, 1972.
- AN. Herbal Enterprises Inc. ta/ Lagoon Restaurant & Bar S-9280  
3700 Atlantic-Brigantine Blvd., Brigantine Lic: C-1  
Charge: Sale to minor, 19 - fine of \$775 in lieu of 10  
day suspension - Order: November 20, 1972.
- AO. Bertha Grower t/a Susquehanna Tavern Mun. Rev 5508  
12 Mercer St. Hackensack Lic: C-46  
Charge: Sale to minor - 5 day suspension by municipality -  
Fine of \$400 in lieu of suspension- Order: Nov. 20, 1972.
- AP. Elise I. Allsop t/a Rio Grande Liquor Store S-9310  
100 W. Rio Grande Ave. Wildwood Lic: D-1  
Charge: Sale to minor, 19 - prior similar record within 5 years -  
fine of \$2,300 in lieu of 20 day suspension -  
Order: November 20, 1972.
- AQ. New Broad Street Bar S-9373  
1140 1/2 Broad St. Newark Lic: 234  
Charges: 'Hours' regulation - Hindering- Prior dissimilar  
record of an owner - 25 day suspension effective  
11/28/72 - Order: November 21, 1972.

- AR. Tanel Corporation t/a Mattia's Carriage Stop S-9357  
e/s Rt. 73, PO Marlton Lic: C-2  
Charge: Mislabeling 5 bottles - license suspended 20 (Evesham Twp)  
days effective 12/8/72 - Order: November 30, 1972.
- AS. Maverick's Penn Jersey Tavern, Inc. t/a Maverick's Penn Jersey S-9354  
606 White Horse Pike, Devonshire, PO RD Egg Harbor Lic: C-3  
Charge: Mislabeling 4 bottles - license suspended for (Mullica Twp)  
15 days effective 12/11/72 - Order: December 1, 1972.
- AT. Improved Benevolent Protective Order of Elks of the World Lodge #1225  
42 Fourth St., Lakewood S-9368  
Charge: Failing to maintain employee information - Lic: CB-4  
prior dissimilar offense - 10 day suspension  
effective 12/11/72 - Order: December 1, 1972.
- AU. Benedict C. DePietro, Inc t/a Andy's Liquor-Delicatessen S-9382  
176 Livingston St. Northvale Lic: D-2  
Charges: Sale to 2 minors both 18 - Hindered investigation -  
license suspended for 20 days effective 12/19/72 -  
Order: December 5, 1972.
- AV. The New Rendezvous Inc. S-9336  
58 Church St. Paterson Lic: C-287  
Charge: Prostitution permitted - license presently suspended under  
previous similar charge - license suspended 144 days -  
effective date of suspension 3/13/73 - Order: Dec. 5, 1972.
- AW. Bob-Syl, Inc. t/a Hilltop Tavern S-9375  
1555 Summit Ave., Hillside Lic: C-16  
Charge: Sale to minor, 18- fine of \$400 in lieu of 10 day suspension-  
Order: December 5, 1972.
- AX. President Palace Cafe, Inc. S-9345  
115 President St. Passaic Lic: C-95  
Charge: Mislabeling 5 bottles - fine of \$800 in lieu of 20  
day suspension - Order: December 6, 1972.
- AY. Suburban Golf Club S-9342  
Morris Ave., PO Box 1278, Union Township, Lic: C-6  
Charge: Mislabeling 5 bottles - fine of \$2,000 in lieu of 20  
day suspension - Order: December 6, 1972.
- AZ. Arrow Athletic Club c/o Old York Country Club S-9295  
Old York Road, PO Bordentown Lic: CB-1  
Charge: Sale to non-members - license sus- (Chesterfield Twp)  
pended 10 days - effective 12/18/72 - Order: Dec. 6, 1972
- AZ.(1) Sara Len Term Bar Inc. S-9409  
157 Parrow St. Orange, Lic: C-56  
Charge: 'Hours' Regulation - license suspended 10 days  
effective 12/12/72 - Order December 7, 1972.
- AZ.(2) Club Aviles t/a Brazil Lounge S-9384  
165 Wilson Ave., Newark Lic: C-452  
Charge: Sale to minor, 18- license suspended 10 days  
effective 1/2/73 - Order: December 11, 1972.
- AZ.(3) Joseph J. Molnar t/a Old Bay House Bar & Grill S-9411  
556 Ocean Ave., Jersey City Lic: C-312  
Charge: 'Hours' Regulation - license suspended 10 days  
effective 1/2/73 - Order: December 12, 1972.

Robert E. Bower  
Director

2. APPELLATE DECISIONS - BERNIE FELDMAN'S LIQUOR STORE, INC. v. BAYONNE.

#3589 - #3680

Bernie Feldman's Liquor Store, Inc., )

Appellant, )

v. )

Municipal Council of the City of )  
Bayonne, )

Respondent. )

O R D E R

----- )  
Feinberg, Dee & Feinberg, Esqs., by William M. Feinberg, Esq., )  
Attorneys for Appellant )

Nathan Zinader, Esq., Attorney for Respondent )

BY THE DIRECTOR:

In case #3589, the appellant appeals from the respondent's denial of its application for renewal of Plenary Retail Distribution License D-2 for the 1971-72 license period for premises located at 440 Broadway, Bayonne.

In case #3680, appellant appeals from the respondent's denial of its application for renewal of the said license for the 1972-73 license period.

These appeals followed appeals from the respondent's denial of application for renewal of its plenary retail distribution license for the 1969-70 license period for the same premises and from respondent's action revoking its license for that period by respondent dated May 21, 1970.

An appeal followed from similar action by the respondent with respect to the application for the 1970-71 license period. In all cases I granted an extension of the license pending the determination of the appeals.

On appeal from the 1969-70 and 1970-71 licensing period which were consolidated for hearing, an order was entered on April 26, 1971 reversing, in both matters, the action of the respondent, dismissing the charges which led to the revocation, and directing the respondent to renew appellant's plenary retail distribution license for the 1969-70 license period nunc pro tunc in accordance with the application filed therefor. Re Bernie Feldman's Liquor Store, Inc., v. Bayonne, Bulletin 1980, Item 1. The order further directed that "Absent any new or additional issues before the Council with respect to appellant's pending application for renewal of the 1970-71 license period that these Conclusions and Order shall be determinative of the said application for renewal thereof."

On Appeal from my order in both matters the Appellate Division of the Superior Court on May 19, 1972 affirmed my action. Bernie Feldman's Liquor Store, Inc., and Division of Alcoholic Beverage Control, Respondent, v. Municipal Council of the City of Bayonne, and, Hudson-Bergen Package Stores Association, a New Jersey corporation, Appellants, (not officially reported, recorded in Bulletin 2050, Item 1).

On October 3, 1972 the Supreme Court of New Jersey denied the petition for certification submitted by the respondent Council and the Hudson-Bergen Package Stores Association, a New Jersey corporation (New Jersey Supreme Court, Docket # C-121 September Term 1972).

The instant appeals involved the same issues of law and fact and were properly subject to the aforementioned provisions in my Conclusions and Order of April 26, 1971. Thus, this is equally applicable to the matters raised in the appeals thereafter filed by the appellant herein. Therefore, I shall on my own motion, reverse the action of the respondent Council with respect to all of these appeals.

Accordingly, it is, on this 16th day of October 1972,

ORDERED that the action of the respondent Municipal Council of the City of Bayonne, with respect to the appeals herein, be and the same is hereby reversed; and it is further

ORDERED that the respondent Municipal Council of the City of Bayonne be and the same is hereby directed to renew appellant's license for premises 440 Broadway, Bayonne, for the 1969-70, 1970-71 and 1971-72 license periods, nunc pro tunc; and it is further

ORDERED that the said respondent Municipal Council of the City of Bayonne be and the same is hereby directed to renew appellant's license for the aforementioned premises for the 1972-73 license period, in accordance with the application filed therefor.

Robert E. Bower  
Director

- 3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS) - PRIOR SIMILAR OFFENSE - RECOMMENDED PENALTY OF 180 DAYS REDUCED TO 90 DAYS BY THE DIRECTOR.

In the Matter of Disciplinary Proceedings against  
Roc-Sum Tavern, Inc.  
368 Summit Avenue  
Jersey City, N. J.,  
Holder of Plenary Retail Consumption License C-311, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS  
and  
ORDER

-----  
Lawrence P. Brady, Jr., Esq., Attorney for Licensee  
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads not guilty to a charge alleging that it engaged in and allowed gambling in the forms of "numbers game" and "Irish Sweepstakes" in the licensed premises on August 4, 5, 7, 13, 1971, in violation of Rule 6 of State Regulation No. 20.

ABC Agent C testified on behalf of the Division that he visited the licensed premises on August 13, 1971 in participation with several members of the State Police Gambling Squad in a raid of the premises on that day. His part in the raid consisted of following the State Police into the establishment after a thirty-second delay and, upon entry, he noticed one Thomas Roche behind the bar. Thereafter he opened the cash register and from it extracted a lottery slip of the Irish Sweepstakes. On cross examination he admitted not turning over that Sweepstake ticket to the State Trooper in charge of the raid and, further, that Roche was immediately joined behind the bar by the manager Kenneth Fogarty.

Detective John E. Leck of the New Jersey State Police testified that in the course of his undercover investigations in the area he had visited the licensed premises on August 5 and 7, 1971. The August 7 visit did not entail coming into the establishment but, rather, in monitoring of the telephone in the licensed premises. On August 5 he was served by Thomas Roche acting as bartender and, while there, overheard a conversation between two patrons who were about six feet away from him. One of them called Roche and said "I got a number for you", following which he gave Roche a three-digit number which Roche put on a slip and deposited the slip in his pocket. The telephone call on August 7, which he monitored, included the placing of a numbers bet.

Jack R. Shade, Detective Sergeant 1st Class, New Jersey State Police, testified that he was in charge of the investigation of the licensed premises on August 13, 1971, which he and the raiding party entered about 4 p.m. Upon his entry he saw Roche behind the bar together with Kenneth Fogarty. There were seven patrons present. Roche, along with all others, was searched and from his pockets was obtained a betting slip. Similar slips were also found in the possession of another patron. He noted that the premises contained two pay-telephone booths.

The betting slips found on Roche were characterized by Detective Leck, who qualified as an expert in gambling matters, as typical numbers bets which do not usually identify the player.

ABC Agent P testified that he accompanied Detective Shade into the premises on August 13, 1971 and saw both Roche and Fogarty behind the bar. He noticed that Roche had money in his hand, moving in a manner similar to that of a bartender giving or making change. He saw Roche approach the cash register with money. He saw Fogarty with a metal box. On cross examination he admitted that both men were near the aperture between the bar and the patron area.

Kenneth V. Fogarty testified that he is one of the principal stockholders of the corporate licensee, the corporate stock of which he had purchased from a prior owner who had had a prior violation, suspension for which occurred after his acquisition of the stock. While under his direction, the licensed premises were operated without violation. He acts as sole bartender during the day from 9 to 5 o'clock. The business does not warrant two bartenders at one time; there were only seven patrons present on the day of the raid, Roche being one of them.

He described the scene upon the police entry. There was actually no one behind the bar then, for he was obtaining a metal box from which he was going to cash a check, and was just returning to the back bar area. Roche was leaning toward the back of the bar for the purpose of obtaining an empty bag into which bottles of beer for off-premises consumption were to be placed. He was emphatic that Roche never was a bartender, had no bartender's license and never tended bar, voluntarily or

otherwise, in the licensed premises. While he admitted on cross examination that he had known Roche for seven or eight years and that Roche was only an occasional patron, he had no idea where he worked or what his occupation was.

Thomas Roche testified that he was in the licensed premises and had been there for two hours on August 13, 1971. He described his momentary action near the back of the bar as an attempt to secure an empty bag. He denied ever taking numbers bets. On cross examination he stated he was unemployed for more than a year. He visits the premises weekly but could not recall being there on August 5 or 7. He denied the numbers slips were taken from his pocket and, when they were shown to him, denied that he had ever seen them before.

Charles W. Bird testified that he has reason to visit the premises as his brother is co-owner of the corporate stock. He visits the premises daily and, having done some construction repairs in the premises, has an accurate knowledge of the dimensions and locations of the fixtures therein. He drew a small sketch, not to scale, during his testimony which revealed a forty-foot bar, the entrance to the rear of which was located at its end. He described the volume of business done in the licensed premises as sufficient only to require the services of one bartender save for New Year's Eve.

On behalf of the licensee, Kenneth V. Fogarty (a principal stockholder and manager of this facility) denied that Roche was ever a bartender and the presence of Roche behind the bar at the time the police entered was merely for the purpose of obtaining an empty bag. After his person was searched, Bird was ordered to depart.

A regular patron of the establishment, Patrick Malone, testified he had entered the premises on August 13, 1971, moments before the aforementioned raid, for the purpose of getting a check cashed. He affirmed that Roche was a patron; that Fogarty had gone to get a metal box in order to cash a check for him. Roche was leaning at the break in the bar when the police entered. He denied Roche was serving anyone. On cross examination he admitted that he was not paying much attention to details prior to the entry of the police.

Detective Albert Geene, of the New Jersey State Police, testified that he had visited the licensed premises on August 7, 1971, as part of an undercover investigation and saw Roche tending bar during the two-hour period he was there. Sergeant Shade, called in rebuttal, testified that, when Roche was arrested, he had given a statement in which he described himself as a bartender in the licensed premises. Roche, recalled, denied that he had made such statement but admitted that he had been a bartender in these premises.

Licensee contended that the testimony of the agents and of the Division witnesses respecting the activity of Roche was at such variance that the preponderance of evidence favored its position. Emphasis was placed on the apparent immunity from arrest of Fogarty by the police despite the testimony by the agent that the sweepstake ticket was found in the register. An apparent similarity of appearance between Roche and Fogarty was the basis for what the licensee claimed was misidentity on the part of the police, i.e., the officers, it was claimed, testified that they saw Roche serving behind the bar when in fact it was Fogarty who was actually the bartender. Such premise by the licensee was vigorously denied by the attorney for the Division.

The testimony given by the State Police officers and the agents of this Division was affirmative testimony given in a clear and distinct manner. Where affirmative testimony is opposed to negative testimony, affirmative must be deemed to outweigh the negative; testimony of a credible witness that he saw or heard a particular thing at a particular time and place is more reliable than that of equally credible witness who, with the same opportunities, testifies that he did not hear or see the same thing at the same time and place. State v. Jones, 105 N.J. Super. 493 (Essex Co. Court 1969).

"Testimony is affirmative or positive if it consists of statements as to what a witness has heard or seen; it is negative if the witness states he did not hear or did not see the phenomenon in question...." Honey v. Brown, 22 N.J. 433, 438 (1956).

Roche was seen tending bar by undercover detectives on two occasions and was observed tending bar on the day of the raid, albeit it is claimed his presence there was for the mere purpose of extracting an empty bag from behind the bar. The manager for the licensee, Fogarty, and a principal witness, Bird, would have us believe that the volume of business in the establishment does not justify two bartenders at the same time. Instead of negating the premise of Roche's non-bartending activity, it only adds to that premise; Roche's comradery with Fogarty and his unemployed status plus his bartending experience lead to an inescapable conclusion that from time to time he did assist behind the bar and, on one or more of these occasions, he was seen by the detectives performing work as a bartender.

I find that there is more than a reasonable probability that the account of the State Police officers and the Division agents is true. "'Reasonable probability' is the standard of persuasion, that is to say, evidence in quality sufficient to generate belief that the tendered hypothesis is in all human likelihood the fact." Bayer v. Frank P. Farrell, Inc., 69 N.J. Super. 347, 351 (App.Div. 1961).

I therefore conclude that the charge herein was established by a fair preponderance of the credible evidence, and recommend that licensee be found guilty thereof.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective January 15, 1951, for sale of alcoholic beverages during hours prohibited by local regulation; by the Director for thirty days effective June 16, 1958, for sale of alcoholic beverages for off-premises consumption during prohibited hours and for possession of fight pool and sweepstakes tickets, both in violation of State regulations. (Re Roc Sum Tavern, Inc., Bulletin 1234, Item 2) and for fifty-five days, by the Director, for permitting gambling on the licensed premises, effective November 10, 1970 (Re Roc-Sum Tavern, Inc., Bulletin 1944, Item 3).

Licensee has offered an argument in mitigation of penalty that the present stockholders of the corporate licensee have been engaged in the operation of the business for the past two years without infraction and, when they acquired the premises, they found it encumbered by the then pending charge for which the license was suspended for the fifty-five days above cited. It asserts inferentially that the instant charge is its first offense.

However, all charges in disciplinary proceedings are not against individuals but, rather, against the license and, as the license itself is suspended, the record of its use becomes controlling. Hence the contention in alleged mitigation must be rejected.

The previous record of suspensions of license for violations occurring more than ten years ago disregarded for penalty purposes, but the violation for similar offense occurring within the past five years considered, it is further recommended that the license be suspended for one hundred eighty days. Re Iandoli, Bulletin 1973, Item 4.

#### Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

I have carefully considered the entire record, including the transcript of testimony, the exhibit, the Hearer's report and the exceptions filed thereto. I concur in the findings and conclusions of the Hearer, and adopt his recommendations except as to his recommended penalty which is disapproved.

The penalty recommended by the Hearer is suspension of license for one hundred eighty days. Precedential Division policy has not considered a prior record of suspension in assessing a penalty for a violation by a corporate licensee where there has been a complete intervening change of all stockholders, bona fide in all respects, and where there are no continuing interests, directly or indirectly, by any of the former stockholders. Since I find that situation to exist in this matter, I shall modify the recommended penalty of one hundred eighty days to a suspension of license for ninety days. See Re Center Market Bar & Grill, Inc., Bulletin 1958, Item 1; Re James Place Corporation, Bulletin 1918, Item 4.

Accordingly, it is, on this 17th day of October 1972,

ORDERED that Plenary Retail Consumption License C-311, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Roc-Sum Tavern, Inc., for premises 368 Summit Avenue, Jersey City, be and the same is hereby suspended for ninety (90) days, commencing at 2 a.m. Tuesday, October 31, 1972, and terminating at 2 a.m. Monday, January 29, 1973.

Robert E. Bower,  
Director.

4. DISCIPLINARY PROCEEDINGS - FRONT - FAILURE TO KEEP BOOKS - LICENSE  
SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 Hilldale Social Club, Inc. )  
 1609 Derosse Avenue )  
 Pennsauken Township )  
 P.O. Delair, N. J., )  
 )  
 Holder of Club License CB-4 (for )  
 1971-72 license period), issued by )  
 the Township Committee of the )  
 Township of Pennsauken. )  
 ----- )

CONCLUSIONS  
and  
ORDER

McGuire, Green & Young, Esqs., by Thomas F. McGuire, Esq.,  
 Attorneys for Licensee  
 Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to charges alleging that (1) in its application for renewal of its club license it falsely stated that no one other than its membership had an interest in the license when in fact one George G. Bundy was the actual owner and received the income and profits derived therefrom, in violation of N.J.S. 33:1-25; (2) it failed to keep true books of account of the licensed business, in violation of Rule 12 of State Regulation No. 7, and (3) it aided the said George G. Bundy to exercise the rights and privileges of the club license, contrary to N.J.S. 33:1-52.

By stipulation and agreement between counsel, the following items were introduced into evidence as joint exhibits: (a) by-laws of Hilldale Social Club, Inc., (b) club minute book, (c) copy of agreement between Bundy and Terminal Vending Co., (d) copy of resolution filed with a bank, (e) double-entry journal of the club, (f) copy of club license, and (g) copy of certificate of incorporation of the club.

Pursuant to specific assignment, Agents G and H visited the licensed premises during January, February and March 1971.

Agent G testified that on January 21, 1971 he visited the club premises and began a series of visits with George G. Bundy (its president). During these visits, extending through March 11, 1971, he inspected all of the club records then available, talked to Clarence Fullard (an accountant for the club). Being informed that the club had been broken into and its records stolen in December 1969, the agent visited the local police where Sergeant Pepper informed him that the Police Department had no record of any theft at the club. The agent further testified that his investigation revealed that the land and building occupied by the club were the property of Bundy; that all income from the club was collected by him, and the bank account in the name of the club carried only Bundy's name as signatory. The only apparent connection between Bundy and the club was a lease for occupancy of the premises at an annual rental of one dollar, with an option to purchase the premises by the licensee allegedly having been orally agreed upon.

The testimony of Agent H corroborated that of Agent G.

Cecil G. Bundy testified on behalf of the licensee. He is a cousin of George Bundy and the Bundy family has seventy to eighty relatives located in the immediate area. Most of these relatives are members of the club, for which he was its treasurer for two years prior to December 1971. As treasurer, his only duty was to check the register, count the receipts and deliver them to the home of George Bundy. The club does have regular meetings, sponsors a ball team, and sponsors social affairs, the proceeds of which are used for charitable purposes (particularly Christmas baskets for the elderly). On cross examination he admitted he was "appointed" treasurer by George Bundy and his term would run "until the club decides to have a new one." He did not handle any of the financial records; George Bundy disbursed all of the funds.

Clarence Fullard testified that as an accountant he prepares the alcoholic beverage tax reports monthly and generally examines the other club records for accuracy. While the club records were not kept in accordance with strict accounting procedures, they were adequate for the limited purposes of the club. The club's tax return indicated non-taxability as a non-profit organization. He was retained on behalf of the club by Daniel Bundy, not George Bundy.

Barbara Y. Bundy testified that she is the daughter of George Bundy; is financial secretary of the club and, by vocation, is a schoolteacher in Camden. The club, which exists to help the community, meets each Tuesday and, after the meetings, financial notations are prepared and George Bundy would write checks. At one point the club was in a minor financial strait and the witness loaned the club \$1,500 to meet then current obligations; she has since been repaid. She exhibited sample membership cards and confirmed the number of members to be about one hundred eighty-three. While they collected no annual dues, there was a \$5 initiation fee.

Edward Adams (a member of the club since 1968) testified that he is currently one of the trustees of the club and, in the company of many other club members, voluntarily performed the physical labor to construct the club building. He is in charge of its "soul brothers" baseball team, one of the more popular activities of the club. He identified eighteen photo snapshots taken during construction and after completion of the building; these reveal an attractive one-story building containing a large meeting hall with a bar along one wall and a kitchen in one end. The exterior has a lighted sign reading "Hilldale Social Club - members only." On cross examination he admitted the trustees "sit there, and chat around."

George G. Bundy testified that he has been a driver in the municipal highway department for the past eighteen years. Sometime between 1952 and 1954 the club was organized and he permitted its members to meet without charge at a building he then owned on Boulevard Avenue. In 1960 the club became formally incorporated and in 1966 a club license was secured. The building and land then housing the club were sold by Bundy for \$17,300 to the municipal housing authority. Land for the new building site was purchased by Bundy who used the net proceeds from the sale of the old building, as well as loans he obtained, for the new construction. The building was erected by club members who gave their services voluntarily. The arduous work of building and arranging financing caused Bundy to have a heart attack.

He further testified that, while the land is in his name and he is president of the club, there never was any question among all of the members that the club owns the building. The club pays the outstanding mortgage and other loans, the taxes and upkeep and, as soon as it is in financial position to pay him \$6,000 of his own money advanced for construction, the "club is theirs", implying that he will then execute a deed to it. He was emphatic that he never profited at any time from the club's activities; the club was a truly good thing for members and inhabitants in that enclave of the community. On cross examination he candidly admitted that the books were not kept properly, that the legal position between him and the club had not been precisely spelled out, but none of these laxities was deliberate or intentionally violative of Division regulations.

Upon conclusion of the hearing, it being then apparent that the slipshod arrangement between Bundy and the club called for correction, counsel for the licensee volunteered to effectuate correction and supply this Division with proof thereof. Shortly thereafter a copy of a recorded lease between Bundy and the club was furnished; this lease provides for a nominal rental with assurance that, upon cancellation of the mortgage, the premises will be conveyed by Bundy to the club for a nominal consideration.

From an analysis of all of the testimony and an examination of the exhibits, it is apparent that the agents were of the opinion that the licensee club was the private and personal preserve of George Bundy, operated for his exclusive benefit. A prima facie review of the sloppy record-keeping, the lack of records and the overriding intrusion by Bundy into the club's business would have justified that assumption. However, the testimony and exhibits in toto give rise to a conclusion that the club is bona fide with sufficient membership and situs to justify its license.

Rule 1 of State Regulation No. 7 defines a club as "An organization, corporation or association consisting of sixty (60) or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes, and not for private gain." Rule 4 of that regulation provides that "... no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three (3) years continuously immediately prior to the submission of its application for a license." The licensee herein qualifies under both rules.

The right to a club license has been supported by this Division from its early days:

"... That's something quite different from refusing to give to a worthy group of men who have clubbed together for benevolent, fraternal, social or recreational purposes, any chance at all to dispense liquor in their own club house except they pay the full fee as if they were conducting the enterprise for private gain or commercial exploitation." Re Deull, Bulletin 234, Item 7.

I am persuaded that Bundy, rather than being an entrepreneur creating and operating a club for his personal gain, is in reality a "do-gooder" with most laudatory intentions. It is recommended that the charges against the licensee -- that the application contained falsities and that it abetted Bundy to derive the income of the club for his personal gain -- be dismissed. However, charge 3 (that the club failed to keep true books of account and proper records) has been fully substantiated.

It is therefore further recommended that, absent prior record, the license be suspended on this charge for ten days (Re Ryans, Bulletin 1959, Item 6). Licensee should be pointedly warned that its failure to comply forthwith with the pertinent regulation requiring it to have and keep a true book or books of account and complete financial records may, upon reinspection by this Division, well result in further suspension or revocation of its license.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument were filed by both attorney for the licensee and the prosecutor for this Division, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered and satisfactorily answered by the Hearer, or are without merit.

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

Accordingly, it is, on this 18th day of October 1972,

ORDERED that Club License CB-4, issued by the Township Committee of the Township of Pennsauken to Hilldale Social Club, Inc., for premises 1609 Derausse Avenue, Pennsauken Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, October 31, 1972, and terminating at 2:00 a.m. Friday, November 10, 1972.

ROBERT E. BOWER  
DIRECTOR

5. APPELLATE DECISIONS - ACETO AND GOERNER v. NEWTON.

Frank Aceto, Jean Aceto and )  
Walter Goerner, )  
Appellants, )  
v. )  
Town Council of the Town of )  
Newton, and Newton Bar and )  
Liquor, Inc., )  
Respondents. )

ORDER

-----)  
McGovern and Roseman, Esqs., by Stephen Roseman, Esq., Attorneys  
for Appellants  
Trapasso, Dolan & Hollander, Esqs., by Sanford Lloyd Hollander, Esq.  
Attorneys for Respondent Council  
Silverman & Hughes, Esqs., by Albert G. Silverman, Esq., Attorneys  
for Respondent Country Pub of Newton and Newton Bar and Liquor, Inc.

BY THE DIRECTOR:

Appellants appeal from the grant of an application by the respondent Town Council of the Town of Newton of a person-to-person and place-to-place transfer of a plenary retail consumption license from Country Pub of Newton, Inc., to Newton Bar & Liquor, Inc., and from premises 119 Water Street to the Shop-Rite Plaza, Route 206, Newton.

Prior to hearing, by letter dated October 13, 1972 appellants' attorney advises that the appellants desire to withdraw the appeal and requests that it be dismissed.

Accordingly, it is, on this 17th day of October 1972,

ORDERED that the appeal herein be and the same is hereby dismissed.

ROBERT E. BOWER  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - AMENDED ORDER ACCEPTING FINE IN LIEU OF SUSPENSION.

In the Matter of Disciplinary Proceedings against	:	
	:	
J. J. Y. Inc.	:	
295 - 9th Street	:	
Jersey City, N.J.	:	AMENDED ORDER
	:	
Holder of Plenary Retail Consumption License C-424 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	:	
.....	:	
Louis E. Saunders, Esq., Attorney for Licensee.	:	
Walter H. Cleaver, Esq., Appearing for Division.	:	

BY THE DIRECTOR:

On November 6, 1972 Conclusions and Order were entered suspending Plenary Retail Consumption License C-424 in above matter for ten days, effective November 20, 1972, in consequence of a violation of Rule 1 of State Regulation No. 38.

Prior to the effective date of such suspension, licensee made timely application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$460.00 in lieu of suspension.

Accordingly, it is, on this 20th day of November, 1972,

ORDERED that my Order dated November 6, 1972 be and the same is hereby amended as follows:

ORDERED that that payment of a fine in the sum of \$460.00 by the licensee is hereby accepted in lieu of a suspension of license for ten days.

*Robert E. Bower*  
Robert E. Bower,  
Director