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

BULLETIN 2168 December 30, 1974

TABLE OF CONTENTS

ITEM

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

BULLETIN 2168 December 30, 1974

1. COURT DECISIONS - FELDMAN v. IRVINGTON.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1814-73

AUGUST FELDMAN and
ANNA FELDMAN
t/a TOWN TAVERN

Appellants,

v.

MUNICIPAL COUNCIL OF THE TOWN
OF IRVINGTON

Respondent.

Argued September 9, 1974 - Decided October 16, 1974.

Before Judges Confor, Michels and Morgan.

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

Mr. Barry Maurer argued the cause for appellants (Messrs. Maurer & Maurer, attorneys).

Mr. Herman W. Kurtz argued the cause for respondent (Mr. Samuel J. Zucker, attorney).

Mr. William F. Hyland, Attorney General of New Jersey, filed a Statement in Lieu of Brief on behalf of the Division of Alcoholic Beverage Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel).

PER CURIAM

(Appeal from the Director's decision in Re Feldman v. Irvington, Bulletin 2149, Item 3. Director affirmed. Opinion not approved for publication by Court Committee on Opinions).

2. APPELLATE DECISIONS - MDM BAR, INC. v. PENNSAUKEN - ORDER

MDM Bar, Inc. t/a Yesterday's	)	
Appellant,	)	On Appeal
v.	)	O R D E R
Township Committee of the Township of Pennsauken.	)	

Palese and Palese, Esqs., by Donald Palese, Esq., Attorneys for Appellant
Higgins, Trimble & Master, Esqs., by Thomas S. Higgins, Esq., Attorneys for Respondent

BY THE DIRECTOR:

This matter came on to be heard on the return date of Order to Show Cause, dated June 25, 1974, why the term of License C-20 held by appellant should not be extended for the 1974-1975 license period pending the determination of this appeal from the denial by respondent of appellant's application for renewal of the said license for the current licensing period.

At the hearings herein on July 25, 1974 and September 17, 1974, it appearing that the basis for the denial of the application for renewal by the respondent Township Committee of the Township of Pennsauken were complaints by residents of the improper operation of the premises, which are continuing and are clearly deleterious to the area surrounding the licensed premises; and it further appearing that appellant is actively engaged in seeking a location for a proposed application for a place-to-place transfer of its licensed premises; and it further appearing that the continued operation at these premises is unwarranted, and contrary to the public interest; it is, on this 25th day of September 1974,

ORDERED that the Order to Show Cause heretofore entered herein on June 25, 1974 extending the term of the License C-20 for the 1974-1975 license period be and the same is hereby vacated.

Leonard D. Ronco
Director

3. APPELLATE DECISIONS - ESSEX COUNTY PACKAGE STORES ASSOCIATION v. NEWARK, ET AL.

Essex County Package Stores Association, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, and First Motor Inn Corp. t/a Gateway Downtown Motor Inn, Respondents.	On Remand CONCLUSIONS and ORDER

Brass & Brass, Esqs., by Leonard Brass, Esq., Attorneys for Appellant
Donald E. King, Esq., by John Pidgeon, Esq., Attorney for Respondent Municipal Board
Stein & Rosen, Esqs., by Frederick Z. Feldman, Esq., Attorneys for Respondent First Motor Inn Corp.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This matter came on to be heard by way of remandment of the Superior Court of New Jersey, Appellate Division, which on June 10, 1974, entered opinion containing the following directive:

> "...However, we will modify our Judgment of April 17, 1974 to provide that the reversal of the order and determination of the Director below is without prejudice, and we remand the matter to the Director to determine whether the proposed alterations to Room for One More as evidenced by Exhibit B, 'will include the package goods facility within its four walls', and thereby satisfy the requirements of N.J.S.A. 33:1-12.23 and Rule 4 of State Regulation No. 32. In this regard, we order the Director to take such additional testimony as he deems appropriate for consideration of the issue, affording all parties an opportunity to present testimony and other evidence in support of their respective positions as to whether the proposed alterations comply with the aforementioned rule and statute in the light of our

Judgment. The temporary stay of our Judgment of April 17, 1974 heretofore granted by Order of this Court, dated May 15, 1974 is vacated. We do not retain jurisdiction."

Essex County Package Stores Association v. Municipal Board of Alcoholic Beverage Control of the City of Newark, et al., Superior Court, Appellate Division(Dockets A-2028-72; M-1385-73). Bulletin 2155, Item 1.

Pursuant to the aforesaid directive, a hearing was held in this Division in which the parties were provided the opportunity to present evidence, introduce testimony and to cross-examine witnesses. The hearing was confined to the issue embraced by the remand. A floor plan and photographs showing the present and proposed areas were admitted into evidence together with the testimony of Louis Jacobson, construction coordinator for respondent First Motor Inn Corp. (hereinafter referred to as Gateway). Following oral argument, memorandums in support of the contentions advanced, were submitted by counsel for the respective parties.

From the testimony of Jacobson, augmented by a series of photographs and a detailed floor plan, the following factual background to the presented issue was developed: Respondent First Motor Inn, Inc. (hereinafter Gateway) is the holder of a plenary retail consumption license. Under this license it operates a restaurant identified as "The Broker" and, on the opposite side of a public corridor, a stand-up bar in an open area called "Room for One More."

This latter area has been designated as its principal bar. It presently consists of a straight bar, the rear wall of which lies partly against the wall of a stairway area and the wall of a "U"-shaped store immediately at its south.

The detailed floor plan of Gateway's proposal indicates that the straight bar presently in the "Room for One More" would be shortened; the wall between it and the store on the south would be removed to permit the shortened bar to be continued at right angle into the store, the major part of which store would contain shelving, a counter and refrigerator for package goods. The photographs introduced into evidence show completed construction of the enlarged bar and the package goods area.

It was admitted and uncontroverted that the enlargement of the bar was proposed merely as a means of effecting a compliance with the statute, N.J.S.A. 33:1-12.23 and the applicable regulation, Rule 4 of State Regulation No. 32.

I

Both photographs marked in evidence and the detailed floor plan of the proposed enlarged area clearly show that the bar area has been increased from an original length of thirty-one feet to a proposed length of fifty-seven feet. Its "U"-shape bisects the

dividing wall, about to be removed, between "Room for One More" and the enlarged area.

From a point of entry at the present "Room for One More" it would be possible to see the entire length of the present and proposed area, and conversely, the view of the entire enlarged area as well as that side of the "U" bar serving the present patrons of "Room for One More" would be unobstructed. Hence, the bar area and package goods section lay together in one general area.

The area involved is generally rectangular; however, jutting into it from the east galleria side is a smaller rectangular area which contains a stairwell and electric machinery, the entrance to which is independent from the proposed licensed premises. Counsel for appellant contends that the existence of this smaller rectangular section prevents the proposed licensed area from having "four walls"; hence, the package goods facility cannot be "within its four walls" as contemplated by the applicable statute.

The court has determined "that a barroom means that portion included within the four walls of the room in which the bar is located". Coral Lounge and Cocktail Bar, Inc., v. Hock, 5 N.J. Super. 163, 167 (App. Div. 1949). All rooms are not precisely rectangular; supportive columns and bearing walls often intrude. The determination is whether the room is a restangular indivisible unit. The room here involved unquestionably is.

II

Appellant further contends that the photographs of the interior of the proposed enlarged area, showing each of the walls containing full floor-to-ceiling shelving, reflect a "package store" of the enlarged area in its entirety. The photographs reveal that a "package store" aspect would command the attention of a cursory observer. Shelving covering two of the interior walls would resemble the interior of the typical package store as such shelving would embrace about forty feet of wall space. However, it has been held that the right to sell alcoholic beverages for off-premises consumption is not determined by the extent of the shelving within a barroom area. Passaic County Retail Liquor Dealers Ass'n v. Paterson, 37 N.J. Super. 187 (App. Div. 1955).

III

Although not as a specific contention, an over-riding critique was advanced by appellant throughout the hearing by which the thesis was offered that the proposed addition is an attempt to construct an additional barroom in the guise of enlarging the present one, solely to enable Gateway to establish a package goods store in contravention of the statute and regulation. In support of this argument, appellants point out that in order for a patron on one side of the bar to reach the package goods area it would necessitate going around the bar and passing through a three-foot six-inch space which conceivably could be partially blocked by

patrons then at that section of the bar. Hence, appellants point out, such a patron would find it far more practicable to leave that portion of the licensed premises, enter a galleria and re-enter the package goods section through that side door. Thus the package goods area would exist as a unit to itself.

It is difficult to assess the degree of difficulty, if any, that a patron might experience in endeavoring to pass through such limited area, however, the problem could be obviated by a simple reduction of the width of the storage area adjacent thereto from its present seven feet to a maximum depth of four feet. Such change is here recommended. The passage thus being widened by an additional three feet, no passageway blockage should be anticipated.

Counsel for appellant and respondent Gateway have filed memoranda in support of their positions. Appellant reiterated its contention that the physical layout of the premises constitute two individual rooms connected by a three-feet six-inch passageway, hence a clear violation of the "broad package privilege" limitations. The attorney for Gateway responded that, since the layout followed the "guidelines" set down by the Division for comparable situations, there is no such violation.

The appellant's argument is not well founded. The open-air space above the bar creates a one-room situation; however, the limitation of passage area to three-feet six-inches does challenge the one-room concept. Thus, the above recommendation, i.e., that Gateway be required to reduce the width of the storage area adjacent thereto so that a passageway of more than six-feet width would be available, would, in effect, result in a one-room situation.

I, therefore, find that Gateway has, subject to the reduction of the depth of the storage cabinet referred to above, complied with the statute (N.J.S.A. 33:1-12.23) and the regulation (Rule 4 of State Regulation No. 32). Accordingly, I recommend that the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark be affirmed, and the appeal herein be dismissed.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed on behalf of the appellant pursuant to Rule 14 of State Regulation No. 15.

I have reviewed and evaluated the arguments set forth in the said exceptions and find that they have either been considered and correctly resolved in the Hearer's report, or are lacking in merit.

The attorney for appellant has requested the opportunity for further oral argument before me. In view of the full apportunity afforded appellant to present its position, both at the hearing, and in its Exceptions, I find no warrant for further oral argument. The request is, therefore, denied.

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

Accordingly, it is, on this 10th day of October 1974,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark in granting the application of the respondent First Motor Inn Corp. t/a Gateway Downtown Motor Inn for a place-to-place transfer to effect the enlargement of its licensed premises be and the same is hereby affirmed; but the grant of said transfer shall be made expressly subject to the imposition of the following special conditions on the license:

(a) that no alcoholic beverage package goods may be sold or displayed for sale to the public in the addition to the licensed premises unless and until the alterations have been completed by the respondent First Motor Inn Corp. t/a Gateway Downtown Motor Inn, in accordance with the plans filed with this Division;

(b) that no alcoholic beverage package goods may be sold, or displayed for sale to the public in the addition to the licensed premises unless and until the said respondent widens the passageway between the enlarged bar and the nearest wall at least an additional three (3') feet, in accordance with the Hearer's recommendation.

Leonard D. Ronco
Director

4. APPELLATE DECISIONS - RIGNEY'S WINE & LIQUOR, INC. v. IRVINGTON.

Rigney's Wine & Liquor, Inc. t/a Rigney's Wine & Liquor Appellant, v. Municipal Council of the Town of Irvington, Respondent.	On Appeal CONCLUSIONS and ORDER

Bernard A. Kuttner, Esq., Attorney for Appellant
Samuel J. Zucker, Esq., by Herman W. Kurtz, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Council of the Town of Irvington (hereinafter Council) which, on April 23, 1974 by a vote of four to two, suspended appellant's plenary retail consumption license for forty days, effective May 13, 1974, upon finding appellant guilty of a charge which, in essence, alleged that on October 11, 1973, it allowed, permitted or suffered one, Larry Burger, to come and remain upon the licensed premises knowing that, about a half hour prior thereto, he had attemped to sell handguns to a corporate officer thereof and had sold a handgun to a patron; and that it failed to order said person off the aforesaid licensed premises, as a result of which a handgun was discharged, striking and causing the death of another patron.

This charge was based on an alleged violation of Rule 5 of State Regulation No. 20 which in applicable part provides that no licensee shall allow, permit or suffer, in or upon the licensed premises an act of violence. Two other charges were dismissed and thus will not be considered in this report.

In its petition of appeal, appellant alleges the Council's action was erroneous because (1) the finding of guilt was against the weight of evidence; and (2) inasmuch as the vote on licensee's motion to dismiss the charge at the end of the Council's case resulted in a tie vote and a majority vote of the Council is required to sustain a finding of guilt, the charge against the licensee should have been dismissed without the necessity of the licensee being compelled to proceed with its defense.

In its Answer, the Council denied the substantive allegations contained in the petition of appeal and alleges that the tie vote was had on a "motion to deny the motion of the licensee," thus "leaving the licensee's original motion negated for failure to obtain a majority vote of the Board (sic)."

Upon filing of the appeal, an order dated May 2, 1974 was entered by the Director staying the Council's order of suspension pending the determination of this appeal.

The stenographic transcript of the hearing below was submitted into evidence supplemented by oral argument and written memoranda at this de novo hearing in accordance with Rules 6 and 8 of State Regulation No. 15.

In behalf of the Council, Irvington Police Detective Raymond Giampino testified that, on October 11, 1973 he visited appellant's tavern and interviewed Patrick Rigney, an officer of the corporate appellant, relative to a shooting therein. Rigney informed him that he was tending bar on that day when a male (whom he identified as Larry Burger) entered the premises. Burger pulled a handgun revolver out of a paper bag and asked Rigney whether he wanted to purchase it. Rigney declined, and Burger then asked patrons whether they were interested in purchasing the gun. Upon being refused, Burger exited from the premises.

After an interval, Burger re-entered the premises while Rigney was in a telephone booth. Rigney heard a shot and, upon emerging from the telephone booth, saw Burger and the victim of the shot.

Antonio Peluso testified that he entered the barroom on October 11, 1973 and while at the bar he was approached by an individual whom he could not identify, who asked him whether he wanted to purchase a gun. They proceeded to the bathroom where the unknown male took a gun out of a paper bag and showed it to Peluso. Not being able to agree on a price, both males returned to the barroom.

While at the bar, an agreement was reached on the price and the unidentified male turned over the gun to Peluso. Peluso asserted that he had no idea where the bartender was positioned at the time that the transaction was consummated.

Detective Stephen W. Schneider of the local police department, testified that Peluso gave him a statement wherein he asserted that the sale of the gun was observed by the bartender and several other patrons.

Roy LaRue testified that he entered appellant's licensed premises on October 11, 1973 and approximately two minutes later he saw Larry Burger enter.

The questioning of this witness revealed the following:

"Q--what did he (Burger) do?
A--and he started down the aisle, and I was watching a baseball game and was talking to Tony Gerardo, and he come in, and he was tuffeling at his shirt.
Q. What happened?
A. Tony ended shot.
Q. Were you there at any earlier hour of that same day?
A. No."

LaRue identified the bartender on duty as Pat Rigney. At the time that Burger entered, Rigney was at the liquor counter at the front of the premises. When the shot was fired, Rigney was in the telephone booth.

At this point in the proceedings, the appellant moved for a dismissal of all charges, including the subject charge. Without acting on appellant's motion, one of the Councilmen moved that the motion for dismissal be denied. This motion ended in a tie vote, three Councilmen voted in favor of the motion and three Councilmen voted against the motion, one Councilman of the seven member Council having disqualified himself at the commencement of the hearing. Since there was no affirmative majority vote to sustain appellant's motion to dismiss, appellant was required to proceed with its defense.

Patrick Rigney, a principal stockholder and officer of the corporate appellant testified in behalf of appellant, that he was acquainted with Burger and that Burger had patronized the tavern six or seven times prior to the date of said incident. On that day, (October 11, 1973) Burger entered the premises, pulled a gun out of a paper bag and asked Rigney whether he wanted to purchase a gun. Rigney responded negatively. There were approximately five patrons at the bar. Burger departed from the premises shortly thereafter.

Approximately 45 minutes later while Rigney was in the telephone booth (which was located not within the line of vision of the front door) he heard a shot.

On cross-examination, Rigney asserted that after Burger attempted to sell the gun to him, he told Burger to "get out". He did not tell Burger not to return to the premises. He did not summon the police.

Kenneth Baguley, who had patronized the licensed premises the past 17 years, testified that he was at the bar when Burger came in and pulled a gun out of a paper bag and offered to sell it to Patrick Rigney. Rigney told him to "Put that away." Burger was not talking loudly, creating a disturbance or using obscene language. Burger departed the premises before he did. The witness was not in the premises when the shooting occurred.

The crucial issue in this appeal is whether the appellant allowed, permitted or suffered an act of violence to occur on the licensed premises.

The test in these matters involving an act of violence is:

> "...The question involved here is whether the licensees could reasonably have taken steps to prevent the act of violence and disturbance that took place on their licensed premises, but failed to do so."

Riverside Corp. v. Elizabeth, Bulletin 2144, Item 3 and cases cited therein.

I find no testimony which would establish that the appellant's bartender could have reasonably anticipated an act of violence, under the circumstances. Nor was there any testimony that there was any disturbance either before or during the incident. Moreover, there was no evidence adducced which would contradict the bartender's testimony that he was in the telephone booth when Burger walked in the second time.

I can understand the Council's concern in this matter, particularly, in view of the fact that the unfortunate incident resulted in a fatality. However, in disciplinary proceedings, a preponderance of the credible evidence is necessary to support and sustain a finding of guilt. Doubtful questions of fact must be resolved in appellant's favor. See, Wasserman and Goldberg v. Newark, Bulletin 1590, Item 1; Club Zanzibar Corp. v. Paterson, Bulletin 1408, Item 1.

After carefully considering the entire record herein, I find an absence of substantial credible evidence to support a finding of guilt. Thus, I conclude that appellant has sustained its burden of establishing that the action of respondent was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Accordingly, I recommend that the action of the respondent be reversed and the charge be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits 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 17th day of October, 1974,

ORDERED that the action of the respondent in finding appellant guilty of the charge preferred herein be and the same is hereby reversed, and the charge be and the same is hereby dismissed.

Leonard D. Ronco
Director

5. APPELLATE DECISIONS - LAJAS TAVERN, INC. v. PASSAIC.

Lajas Tavern, Inc., t/a Lajas Tavern, Appellant, v. Municipal Board of Alcoholic Beverage Control of the City of Passaic, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Chester & Krakauer, Esqs., by Jack Krakauer, Esq., Attorney for Appellant
Michael A. Konopka, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from a forty-day suspension of its license by the Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) after it found appellant guilty of a charge alleging that on March 3, 1974 appellant permitted gambling on the licensed premises, in violation of Rule 7 of State Regulation No. 20; and that it permitted the sale of alcoholic beverages during hours prohibited by local ordinance; and that it failed to provide an unobstructed view of the interior of the premises, in violation of the local ordinance.

Appellant contends that the action of the Board was arbitrary and contrary to the weight of the evidence adduced before it. The Board, in its answer, asserts that its action was reasonable and based upon its fair consideration of the evidence.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15.

Passaic Police Officer Richard Wolak testified that on May 3, 1974 he was on duty in a radio car with his partner when a call was received at 2:59 a.m. directing him to appellant's premises. They arrived at 3:00 a.m. and found the doors leading to the front, side and rear locked. He attempted to make an observation through the windows but his view was blocked by shades or screens. He was attempting to make an observation into the side door window when fellow officers arrived and began kicking at the rear door.

At that moment, the side door was opened by a patron, later identified as Juan Irizarry, and Officer Wolak rushed in, entered a rear room where he saw a table with cards on it, chairs were occupied by patrons, and coins were on and under a card table. A fellow officer picked up $37.00 in crumpled bills in a corner of the room. The four men in the premises were not identified. The bartender was issued a Municipal Court summons, for being open after "hours" and for failing to have an open view of the interior of the premises.

A patron, Francisco Rosa, testified that he had been in the premises, saw no gambling and departed about 2:30 a.m., just when police cars began to arrive. He visited another tavern, and upon leaving, went to the sidewalk across the street of the subject premises to observe what was happening there.

Another patron, Juan Irizarry, testified that he was in the licensed premises from 11:30 p.m. until the arrival of the officers which, he noted, was about 2:35 a.m. according to a wall clock. The bartender asked the patrons to leave and some did so.

Five minutes later, there were noises at the doors. He opened the side door and Officer Wolak entered with other policemen. At that time there were about six persons in the premises, four playing cards and one man watching. No drinks were then served to those persons at the tables, and there was no gambling in progress.

No one on behalf of the management or any employees were called as witnesses.

I

Respecting the charge alleging that there was an illegal sale of alcoholic beverages, and the premises were not open to view both in violation of the local "hour" ordinance, and examination of Section 3.7 of the Municipal Code reveals that the closing hours commence at 3:00 a.m. and "(c) During the hours when sales of alcoholic beverages are prohibited, the entire licensed premise shall also be closed, except in bona fide hotels and restaurants. (d) During all closing hours all shades, screens and other obstructions shall be removed from the windows and doors of the licensed premises."

There was no proof whatever that any sale of alcoholic beverage occurred subsequent to the closing hour nor did the charges embrace an allegation that the premises were not "closed", although the summons issued to the bartender included a charge that the premises were open after hours.

The ordinance clearly indicates the requirement that all "shades, screens and other obstructions shall be removed from the windows and doors...." The police officer testified that all attempts to see into the premises failed because of screening or obstruction. Photographs introduced into evidence revealed that the window has both shades and a curtain which, if lowered, would obscure any vision.

One of appellant's witnesses insisted he could see the interior of the premises from the outside, because he looked through the windows before entering to see "a guy who owed me twenty bucks." However, this observation was made much earlier, and prior to the time the premises were allegedly closed by the bartender.

The remaining witness for appellant testified that it would be possible to see through the front window following closing hours.

I find that that part of the charge which refers to the alleged sale of alcoholic beverages in violation of the applicable ordinance is not sustained by the evidence. However that part of the charge relating to the alleged failure to provide an unobstructed view of the interior has been sustained by a fair preponderance of the credible evidence.

II

The testimony relating to the gambling charge by Officer Wolak was clear and convincing. The discovery of the card table, cards, coins and crumpled bills on the floor give rise to an inescapable inference that gambling took place. Appellant's witness denied the allegation, but such denial carried a hollow ring.

The result of the police raid, as described by both the police reports admitted into evidence, and the testimony of Officer Wolak persuasively establish that the violations, as alleged, with the exception of the charge relating to the after-hours sale, have been established by a clear preponderance of the credible evidence.

The premises were closed, the curtain drawn and four men were therein playing cards for money. No other reasonable conclusion could be drawn from the believable evidence. The time of the occurrence was singularly established, both from testimony and the police reports. The witnesses for appellant testified without clarity respecting the time and the manner of entry. However, the incident in totality was described by all witnesses so that the same over-all picture emerged.

A defense to the charge of permitting gambling on the licensed premises was raised by the appellant who contended that, as the incident related did not result in a criminal charge of gambling against the participants, the charge herein could not be sustained. Such contention is without merit.

A criminal charge against any defendant is directed to that defendant personally. The charge herein is directed against the license and is purely and disciplinarily civil in nature. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). Moreover, the charge relates to "allowing, permitting or suffering" gambling to take place within a licensed premises and does not relate to a contention that a particular person or persons were or were not guilty of gambling.

III

In sum, the charge that the licensee sold alcoholic beverages after hours could not be substantiated. No proof to that end has been offered. Consequently, I find that in that respect appellant has established that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15. In all other respects however, I find that appellant's burden of establishing that the action of the Board was erroneous and should be reversed has not been met. It is, therefore, recommended that the action of the Board be affirmed except in connection with the unestablished charge as stated hereinabove.

Consequently, it is recommended that the penalty imposed by the Board of ten days on the Ordinance violation of which paragraph (a) remained unproven, be modified from ten to five days making a total suspension of thirty-five (35) days in the charges herein; in all other respects the action of the Board be affirmed, and the appeal be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the 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.

Accordingly, it is, on this 30th day of September 1974,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic in finding appellant guilty of the charge herein set forth relating to permitting gambling upon the licensed premises in violation of Rule 7 of State Regulation No. 20, be and the same is hereby affirmed; and it is further

ORDERED that the action of the said respondent which found appellant guilty of that part of the charge which alleges a violation of the provision of the local ordinance requiring the premises to be open to interior view be and the same is hereby affirmed; and it is further

ORDERED that the action of the said respondent which found appellant guilty of that part of the charge which alleges a violation of the local ordinance prohibiting the sale of alcoholic beverages after closing hours be and the same is hereby reversed; and it is further

ORDERED that the order dated May 22, 1974, entered herein, staying the respondent's order of suspension pending the determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that the suspension of forty (40) days heretofore imposed on Plenary Retail Consumption License C-128, issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Lajas Tavern, Inc., t/a Lajas Tavern for premises 198 Monroe Street, Passaic, be and the same is hereby modified to a suspension of license for thirty-five (35) days, commencing 3:00 a.m. on Thursday, October 10, 1974 and terminating 3:00 a.m. on Thursday, November 14, 1974.

Leonard D. Ronco
Director