CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1985

PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-164
OAL DOCKET NO. CCC 8009-84
APPLICATION NO. 46445-21

APPLICATION OF AALIYAH H. AMIN :

FOR A CASINO EMPLOYEE LICENSE :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 24, 1985,

IT IS on this 7th day of May 1985, ORDERED that the initial decision in this matter is affirmed; and

IT IS FURTHER ORDERED that the application of Aaliyah H. Amin for a casino employee license is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Aaliyah H. Amin is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Aaliyah H. Amin, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casino hotels within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8009-84
AGENCY DKT. NO. 84-EA-164

AALIYAH H. AMIN,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Respondent.

Aaliyah H. Amin, petitioner, pro se

Joanne Cocchiola, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: January 28, 1985 Decided: March 14, 1985

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Aaliyah H. Amin, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (casino teller), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose information material to licensure, i.e., her criminal record history, and, therefore, lacked the requisite good character, honesty and integrity. The essential issue concerned the reasons for the applicant's failure to disclose her criminal record history.

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PROCEDURAL HISTORY

Ms. Amin filed her Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on April 29, 1983 (R-1). By letter, the Commission advised the applicant that, based upon information received in reports from the Division, dated May 23, 1984 and August 29, 1984, there was a "substantial possibility" that the Commission would deny licensure and that she had a right to a hearing. By letter dated October 17, 1984, Ms. Amin requested a hearing. On October 29, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 12, 1984. The matter was heard on January 28, 1985, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Amin is 27 years of age (R-1). She has been, except for a brief period, a life-time resident of Atlantic City. The applicant is a June 1977 graduate of Atlantic City High School. She has been married for the past five years.

On May 12, 1976, the applicant was arrested under the alias of Sheryle Wooten by the Egg Harbor Township Police Department and was charged with a violation of N.J.S.A. 2A:170-98, shoplifting, concerning an incident which occurred in a Sears Department Store in Cardiff, New Jersey (R-2). The incident involved the theft of one slacks set with a value of approximately $30. On May 28, 1976, the applicant appeared in court, again under the alias of Sheryle Wooten. The applicant pled guilty and was fined $125 plus $25 court costs. The fine was never paid. The applicant was 18 years of age at the time of the offense. The circumstances underlying the applicant's use of an alias were in dispute and will be discussed, infra.

From June 1977 to September 1978, the applicant was employed by L & B Sewing Factory in Greenville, North Carolina, as a sewing machine operator. She was laid off from this position.

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From September 1978 to June 1979, the applicant attended Business Careers Institute under the auspices of the Comprehensive Employee Training Act (CETA), where she took secretarial and bookkeeping courses.

In 1979 the applicant was licensed by the Commission as a casino hotel employee (license number 10701-40) and as a casino employee (security) (license number 13922-21) under the name of Pamela Jean Lingham. The applicant's name was changed by court order in December 1981. In respose to question number 46 on her PHDF-2 filed with the Comission on November 28, 1979, the applicant did not disclose her criminal record history. Apparently, the Division never discovered the applicant's involvement in the incident of 1976.

From June 1979 to May 1980 the applicant was employed by Resorts International Hotel, Inc., and Bally's Park Place Casino Hotel as a cashier and security guard, respectively. The applicant was laid off from her position with Resorts.

From June 1980 to March 1981, the applicant was employed by the United States Post Office in Atlantic City as a postal clerk.

On April 29, 1983, the applicant filed her PHDF-2A with the Commission, in which she sought licensure as a casino teller (R-1). In response to question number 16, the applicant did not disclose and denied having any criminal record history. Nevertheless, the applicant testified that at the time she completed the PHDF-2A, she knew that she was required to disclose the subject conviction. Further, on May 3, 1984, Dwayne Brooks, an agent with the Division, conducted a telephonic interview of the applicant. In response to a reading of question number 16 from her PHDF-2A by the agent, the applicant denied having a criminal record history. Further, upon confrontation by the agent with the details concerning the incident of May 12, 1976, and the subsequent court appearance, the applicant continued to deny her involvement therein. Again, the applicant knew that she was required to disclose her criminal record history to the agent. Nevertheless, the circumstances underlying the applicant's refusal to disclose on both her PHDF-2A and to Agent Brooks were in dispute and will be discussed, infra.

The applicant has not been involved in any subsequent violations of the criminal laws.

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Ms. Amin is currently a full-time student at Stockton State College, where she majors in criminal justice. She is scheduled to graduate in 1987. The applicant also plans to attend graduate school.

The applicant currently sings with a choral group. In addition, she is a volunteer for both the Atlantic County Probation Office and the Atlantic City Medical Center.

All of the preceding evidence is undisputed and believable and is thus FOUND AS FACT.

(B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's use of an alias during the incident of May 12, 1976, and the circumstances underlying the applicant's failure to disclose her criminal record history on her PHDF-2A and to Agent Brooks.

The applicant conceded her involvement in the incident of May 12, 1976, including her use of a false name. The applicant used a false name because she panicked and because she feared that her family would learn of her misconduct.

Again, the applicant conceded that she did not disclose her criminal record history on both her PHDF-2A and in response to questions posed by the agent. The applicant did not want her family or her husband, who is a casino hotel registrant, to know of her prior misconduct, because of her fear and embarrassment. Further, she had not disclosed her involvement in the incident on her original PHDF-2 and had not been confronted in that regard by the Division (R-3). Therefore, she believed that the incident would not be discovered by the Division during its investigation of her PHDF-2A. However, the applicant's husband was not present at the time she was interviewed by Agent Brooks. The applicant also testified that she was not certain of the identity of the agent, and believed him to be a state trooper investigating her application for licensure.

The applicant has subsequently informed her husband and her family of her involvement in the incident. They have reacted with shock and outrage at her prior misbehavior and her failures to disclose.

Because the applicant's testimony appeared to be credible and because the Division offered no contradictory evidence thereof, I am persuaded to accept her testimony in full.

The most significant issue of fact in this matter concerns the reasons for the applicant's failure to disclose fully her criminal record history on her PHDF-2A and to Agent Brooks. The applicant's explanation that her nondisclosures were based upon the Division's failure to discover her prior nondisclosure on her PHDF-2 and of her fear and embarrassment at having her family and husband learn of the incident was believable.

After consideration of the entire record in this matter, I further **FIND** that:

1. The applicant used an alias during the incident of May 12, 1976, and the subsequent court appearance, because she did not wish her family to learn of her misconduct.

2. The applicant failed to disclose her criminal record history on her PHDF-2A and in response to questions posed by Agent Brooks, because the Division had not discovered her prior nondisclosure on her PHDF-2 and because of her fear and embarrassment at having her family and husband learn of her prior criminal misconduct.

3. The applicant testified truthfully.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86b

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

> So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b)

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License 78-EA-8 (Jan. 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp

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the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

There is no dispute that the applicant understood fully her obligation to disclose her arrest on May 12, 1976, and the disposition of the charges on her PHDF-2A and in response to questions posed by Agent Brooks; however, the applicant did not. The applicant's explanations of the reasons for her failures to disclose were completely believable. However, the applicant's failures to disclose were not, in any regard, due to ignorance or inadvertence. Rather, they were knowing, intentional and purposeful. Therefore, the failures to disclose must serve to disqualify the applicant from licensure.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of section 86b, because of her failures to disclose her involvement in the incident of May 12, 1976.

(B) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Ms. Amin was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission

(November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish her qualifications for licensure under section 89b(2). William Gonzalez at 8. Therefore, the conclusion that Ms. Amin failed to disclose her criminal record history in violation of section 86b automatically precludes her from meeting her burden under section 89b(2). Further, an applicant's willingness to disclose fully her criminal record history is the most direct and reliable means of testing her good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if she does, in fact, possess good character, honesty and integrity.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, her good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Aaliyah H. Amin for licensure as a casino employee (casino teller) be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 14, 1985
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

March 15, 1985
DATE

Bernadette N. Fagan
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 19 1985
DATE

Ronald L. Parker/pk
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

R-1 Personal History Disclosure Form - 2A, Aaliyah Amin, filed on April 29, 1983 (23 pages)

R-2 Egg Harbor Township Police Department - Arrest Report, Sheryle Wooten, May 12, 1976

R-3 Personal History Disclosure Form - 2, Pamela Lingham, filed on November 28, 1979 (29 pages)

R-4 Copy of Fingerprints of Sheryle Wooten (2 pages)

WITNESS LIST

FOR THE APPLICANT:

Aaliyah H. Amin

FOR THE RESPONDENT:

Dwayne Brooks

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 48335-21
AGENCY DOCKET NO. 84-EA-81
OAL DOCKET NO. CCC 4454-84

IN THE MATTER OF THE APPLICATION

OF ANNE C. ANDERER — FINAL ORDER

FOR A CASINO EMPLOYEE LICENSE

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 4, 1984, recommending that the application of Anne C. Anderer for a casino employee license be granted; and no exceptions having been filed; and the Commission, at its public meeting of January 23, 1985, having resolved to grant the application,

IT IS on this 11th day of February 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted; and

IT IS FURTHER ORDERED that the casino employee license of Anne C. Anderer be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the applicant and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4454-84

AGENCY DKT. NO. 84-EA-81

ANNE C. ANDERER,

Applicant,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Mark Vasser, Esq., for the applicant (Vasser, Spitalnick, Bloom, Mazin & Stein, P.C., attorneys)

Anthony V. D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 19, 1984 Decided: December 3, 1984

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Anne C. Anderer, applicant, to the Casino Control Commission (Commission) for licensure as a casino employee (casino host), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of the applicant's purported criminal misconduct and its contention that the applicant lacked the requisite good character, honesty and integrity. Although the applicant conceded her criminal misconduct, she contended that she has satisfied the rehabilitation criteria of N.J.S.A. 5:12-90h.

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PROCEDURAL HISTORY

Ms. Anderer filed her Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on August 16, 1983. By letter, the Commission advised the applicant that, based upon a report received from the Division, dated May 3, 1984, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By letter filed with the Commission on June 7, 1984, the applicant requested a hearing. On June 18, 1984, Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 10, 1984. The matter was heard and the record was closed on October 19, 1984.

FINDINGS OF FACT

Ms. Anderer is 33 years of age (P-1). She has been a New Jersey resident since 1977.

The applicant is a 1969 graduate of Suffern High School, Suffern, New York. She is also a 1973 graduate of Central Connecticut State College, New Britain, Connecticut, where she earned a bachelor of science degree, with a major in English education and a minor in psychology. In 1976 she completed successfully an advanced travel industry course at the TWA-Breech Academy.

From December 1975 to June 1977, the applicant was employed by Cruise International, in Norfolk, Virginia, and performed charter travel services.

From June 1977 to July 1980, the applicant was employed as a tour manager by and was a part owner of Atlantic Connection Tours, in Atlantic City, New Jersey. Her duties and responsibilities involved the booking of groups in hotels and making arrangements for ground transportation services.

On June 29, 1980, the applicant married Robert E. Anderer. Mr. Anderer was then employed in the casino industry. Since their marriage, Mr. Anderer's child by a prior marriage has resided with them.

From late 1979 through the spring of 1980, the applicant and her husband were involved in the "casino scene," which consisted of their occasionally using and selling drugs. More specifically, Mr. and Mrs. Anderer occasionally used and sold cocaine from their apartment. On or about August 4, 1980, Ms. Anderer was involved in an incident wherein quaaludes and cocaine were sold to Detective Norman Jackson, of the New Jersey State Police, who was acting in an undercover capacity (J-1). This incident will be discussed in greater detail, infra.

Subsequent to this incident, the applicant presented her husband with an ultimatum. Based upon her concerns regarding their drug use and sales, and the negative effect of that activity upon their lives, she believed it was necessary to terminate their involvement with drugs, break their ties with persons who used drugs and to relocate in order to get a fresh start. The alternative was that the marriage would end. As a result, in August 1980, the applicant, her husband and his son relocated to Dallas, Texas. At the time they had no knowledge of any investigation regarding their prior drug activities. Also, the applicant reached agreement to sell her interest in Atlantic Connection Tours. Because Mr. Anderer's job in Dallas was not satisfactory, in September 1980 they returned to Atlantic City.

Upon her return to Atlantic City, the applicant commenced employment as a tour representative with World International Hotels. Her duties and responsibilities included making travel arrangements and providing services for bus tour groups. This employment continued until November 1981.

On August 20, 1981, the applicant and her husband were indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(1), possession with intent to distribute a controlled dangerous substance, cocaine and methaqualone; N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, cocaine and methaqualone, without a valid prescription; N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(1), distribution of a controlled dangerous substance, cocaine and methaqualone; N.J.S.A. 24:21-19a(1), N.J.S.A. 24:21-19b(1) and N.J.S.A. 2C:2-6c, aid and abet in the distribution of a controlled dangerous substance, cocaine and methaqualone; N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(1), possess with intent to distribute a controlled dangerous substance, cocaine and methaqualone; and N.J.S.A. 24:21-20a(1), unlawfully possess a controlled dangerous substance, cocaine and methaqualone, without

benefit of a valid prescription (R-1). The indictment primarily concerned the incident of August 4, 1980. As a result of a discussion between Det. Jackson and the applicant on July 29, 1980, the detective contacted the applicant on August 4, 1980, regarding the potential purchase of quaaludes. The detective met with the applicant at her office and agreed to purchase 100 quaalude tablets and some cocaine. The applicant contacted her husband and arranged for the transaction. The applicant accompanied the detective to her home, where they met Mr. Anderer. Mr. Anderer sold an eighth of an ounce of cocaine for a purchase price of $340 and 100 quaalude tablets for a purchase price of $240 to the detective (J-1). The substances were tested positive for cocaine and methaqualone (J-2 and J-3). Pursuant to a plea bargain agreement, Mr. Anderer pled guilty to one count and the charges against the applicant were dismissed. Mr. Anderer was sentenced to six months and was fined. Beginning on November 13, 1981, he commenced serving four months of his sentence. During his incarceration he was accepted into the work-release program. He recently paid off the remainder of his fine and has been released from probation.

From December 1981 to March 1982, the applicant was employed as a tour representative by RCI Tours in Atlantic City.

From April 1982 until the present, the applicant has been employed as a tour representative in Atlantic City by Globetrotters, of Cambridge, Massachusetts. Her duties and responsibilities involve providing service to tour groups. This is a full-time position, with work responsibilities on Sunday, Tuesday and Friday. This employment has been satisfactory in all respects.

During 1984, the applicant was employed in the casino credit area of Harrah's Casino Hotel for a period of three months. She left the position when the facility opened because of objections raised concerning her licensure. The applicant has been advised that a position would be available to her upon licensure.

From September 1980 until March 1982, Mr. Anderer was employed by Zaberer's Restaurant in Atlantic County. Since then he has been employed as director of sales by World International Hotels in Atlantic City.

In October 1982 the sale of the applicant's interest in Atlantic Connection Tours was completed.

Neither the applicant nor her husband had been involved in any violations of the criminal laws since August 1980.

In June 1982, the applicant and her husband purchased a home in McKee City. The applicant takes an active role in caring for Mr. Anderer's child, who is now 12 years of age. The applicant and her husband plan to adopt a child in March 1985.

The applicant is involved in Little League activities and Cub Scouts. She has also been involved in placing calls to senior citizens on behalf of the election board. She also tutors two Spanish-speaking children in her neighborhood.

All of the preceding evidence is undisputed and believable and is thus FOUND AS FACT.

(B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's involvement in the incident of August 4, 1980, her current relationship, if any, with unlawful drug activity, and her character, honesty and integrity.

Ms. Anderer testified to the circumstances underlying the incident of August 4, 1980. For approximately nine months prior to that time, she and her husband had been involved in the occasional use and sale of drugs. Both testified that their use was minimal. Also, the applicant's involvement in the sale of drugs was very limited and usually involved making a telephone call to her husband. Mr. Anderer testified that his drug activities resulted in a net loss to him of $5,000-6,000.

Both the applicant and her husband testified that they ceased any involvement in drug activity in August 1980. They have not used, sold or otherwise been associated with individuals involved in illicit drug activities since that date. The applicant testified that in 1980 she recognized the difficulty that drugs were causing in her life and decided to reform her conduct. At this point, she gave her husband an ultimatum. In addition, the applicant and her husband have disassociated themselves with their prior acquaintances who were involved in drug activity. The applicant readily admitted her prior misconduct and accepted full responsibility therefore. The applicant disclosed her involvement in the incident in response to question number 14 on her PHDF-2A (P-1). The applicant and her

husband both expressed a very strong and sincere desire not to repeat their prior misconduct.

The applicant also called Det. Jackson, who testified that he had been active in the Narcotics Bureau until 1981 and had not learned of any subsequent involvement by the applicant or her husband in illicit drug activity since August 4, 1980.

Although the Division did not offer any rebuttal to the applicant's affirmative presentation, it is essential to assess the applicant's credibility. Initially, Ms. Anderer's position in this matter must be recognized. She is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of the record that, from my observations of the applicant's demeanor, the plausibility of her testimony, the consistency between her explanations of her conduct and the testimony of other witnesses and the documentary evidence, and from examination of the documentary evidence, the applicant testified truthfully. The applicant's testimony was candid, consistent, believable, sincere and most persuasive. The applicant acknowledged fully the extent of her wrongdoing and accepted full responsibility therefor. Also, the applicant expressed a sincere intent not to repeat her misconduct. In the final analysis, I am persuaded to accept her testimony in all respects.

The applicant also produced six witnesses to testify on her behalf. The first, was her husband. Mr. Anderer testified that the applicant has been an excellent mother to his child and that they plan to adopt another child early next year.

Dan P. Geiger, president of Geiger Transportation Company, was the applicant's second witness. The witness's company is involved in the provision of van, autobus and limousine services to the casino-hotels. He has known the applicant for the past seven years through their respective businesses. Mr. Geiger stated that he was surprised when he heard of the applicant's involvement in the incident of August 1980. The witness has observed the applicant to be an honest and hardworking businesswoman who does a good job in a conscientious manner. He has also observed her to be a good mother.

The applicant's third witness was Gerald A. Greenberg, general manager of World International Hotels (P-6). The witness is a partner in three of five non-casino-

hotels. He has known the applicant since October 1977 and has done an extensive amount of business with her. He is also familiar with her involvement in the incident. The witness was of the opinion that the applicant is a person of integrity and has more than demonstrated her business abilities.

The applicant next called Wilbur Howell, who is employed by B & H Tours in Atlantic City and has known the applicant since 1979 through business. The applicant has frequently provided services to the witness's tour groups. Mr. Howell observed the applicant do an excellent job and has never had any reason to question her honesty. Although he was unaware of the nature of the incident until the hearing, he stated that his opinion was unaffected.

The applicant's next witness was John J. Nittolo, employed as a floor person by the Tropicana Hotel and Casino. He has known the applicant for approximately three years as a neighbor. Mr. Nittolo is a single parent, and he has entrusted the care of his child to the applicant on a regular and continuing basis. The applicant has always given his child the utmost care. The witness was aware of the applicant's involvement in the incident of August 1980. In addition, he has never observed the applicant nor her husband to be involved in any drug activity during the three years during which he has known them. The witness was of the opinion that the applicant was a person of the highest integrity and was a person who was deeply involved in her community and a substantial contributor to the young people in the community.

The applicant also called Michele Palumbo to testify on her behalf (P-12). Ms. Palumbo owns and operates a clothing boutique in Margate and has known the applicant since they met at World International Hotels six years ago. Their relationship initially was business in nature but has become personal. The witness stated that she was shocked to learn of the applicant's involvement in the incident of August 1980. However, the applicant has regained her trust and respect since the incident and is a person of the highest integrity. Further, the witness has remained friends with the applicant and currently entrusts the care of her minor child to the applicant on a regular basis. Also, while on vacation the witness has entrusted the keys to her store and home to the applicant.

In addition to the witnesses on her behalf, the applicant produced letters attesting to her good character, honesty and integrity from Stanley Shwidock, president of Lawrence Motors, Inc., who has known her for the past twenty-two years (P-2); Frank J. Livelli, president of Contract Advertising, Inc., who has known the applicant for the past ten years (P-4); John W. Tawney, general manager of Galt Ocean Club, who has known the applicant for approximately six years (P-5); Allen McClain, president of Travel Marketing, who has known the applicant for the past four years (P-7); Dr. Philip Slipyan, of the University of Pennsylvania School of Medicine, who has known the applicant since November 1981 (P-8); Edith G. Sherman, manager of group sales for World International Hotels, who has known the applicant for the past six years (P-9); Dorothy R. Williams, a social and business acquaintance of the applicant for the past six years (P-11); Alexandra Moise, a business associate of the applicant (P-13); Ruth A. Curtis, a business associate of the applicant (P-14); Diane M. Bird, an acquaintance of the applicant for several years (P-15); Bill Cannon, who knows the applicant through Little League activities (P-16); and Kathleen Roe, who has been acquainted with the applicant for the past four years (P-17).

After consideration of the entire record in this matter, I further **FIND** that:

1. During the period from late 1979 until August 1980, the applicant was an occasional user of cocaine and occasionally was involved with her husband in the sale of cocaine and quaaludes.

2. On August 4, 1980, the applicant participated with her husband in the sale of quaaludes and cocaine to Det. Jackson, who was acting in an undercover capacity.

3. The applicant has acknowledged her involvement in the incident and has accepted full responsibility for her actions.

4. The applicant has not used or been involved in the sale of drugs since August 1980.

5. The applicant's husband has not used or otherwise been involved in the sale of drugs since August 1980.

6. The applicant's testimony was credible in all regards and was persuasive.

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7. The applicant expressed a sincere intent not to repeat her prior misconduct.

8. Business associates, friends and neighbors of the applicant are of the opinion that she is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(3)

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(3) of the Act provides for the disqualification from licensure of a person who has been convicted of a high misdemeanor under N.J.S.A. 24:21-19 et seq. The Division alleged under section 86c(3) that the applicant's conduct on August 4, 1980, constituted violations of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance, cocaine and quaaludes, with intent to distribute, and of N.J.S.A. 24:21-20, possession of controlled dangerous substances, cocaine and quaaludes.

There was no dispute that the applicant's conduct constituted the charged violations.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, the violation of N.J.S.A. 5:12-86c(3), which mandates disqualification from licensure.

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, the applicant seeks licensure as a casino host. In such a position she would have substantial contact with patrons of the casino, but would have no involvement in gaming activities.

Second, the applicant's misconduct involved the use and sale of narcotics, and, as such, is very serious in nature.

Third, the applicant became involved, together with her husband, in the sale of narcotics, for a period of nine months. It is apparent that their involvement was primarily social in nature. On August 4, 1980, the applicant participated in the sale of cocaine and quaaludes to an undercover officer.

Fourth, the incident occurred on August 4, 1980, in excess of four years ago.

Fifth, the applicant was 29 years of age at the time of the incident. The applicant's misconduct cannot be attributed to immaturity.

Sixth, although the applicant was charged with criminal activity on a single date, it is readily apparent that she was involved in the use and sale of narcotics during a nine-month period from late 1979 to mid 1980. Nevertheless, this appears to be the only time during the applicant's life in which she has been so involved. Accordingly, I am

persuaded that this period was isolated in nature. Further, the applicant has committed no other violations of the criminal laws.

Seventh, there were no social conditions which contributed to the offense.

Eighth, the applicant has exhibited substantial rehabilitative efforts. Prior to her arrest and her indictment, the applicant voluntarily withdrew from any use or other involvement in drug activity. Also, she presented her then recent husband with an ultimatum concerning his involvement in illegal drug activity. Since that time, she has not used or otherwise been involved in drug activity. Further, the applicant has acknowledged fully her prior misconduct. In adddition, the applicant has continued to build upon her very positive employment record. Further, she has taken on substantial responsibilities for the care of her husband's child and involvement in many community activities. The applicant has also established that her misconduct was an aberration in her life and that it is unlikely that it will ever recur. Accordingly, I am persuaded that the applicant has met her statutory burden to establish her rehabilitation.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Ms. Anderer was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency

Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

There is no dispute that the applicant's prior misconduct was serious in nature. However, the applicant has acknowledged full responsibility for her actions and has not repeated her misconduct. Accordingly, the applicant has established that her misconduct was an aberration in her life, and has demonstrated affirmatively her complete rehabilitation. Also, the applicant has continued her very positive employment record. Last, the applicant is a substantial contributor to the community in which she resides. Accordingly, the applicant presents no risk to the public or to the integrity of casino gaming in this state. The applicant's presentation establishes convincingly that she is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, her good character, honesty and integrity under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Anne C. Anderer for licensure as a casino employee be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 3, 1984
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 07 1984
DATE

Ronald L. Parker/ptb
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 New Jersey State Police - Investigation Report, prepared by Detective Norman Jackson, August 5, 1980 (3 pages)

J-2 State of New Jersey, Department of Law and Public Safety, Division of State Police, Special and Technical Services Section - Request for Examination of Evidence, August 5, 1980

J-3 State of New Jersey, Department of Law and Public Safety, Division of State Police, Special and Technical Services Section - Laboratory Report, November 7, 1980

P-1 Personal History Disclosure Form - 2A, Anne Carol Anderer, filed on August 16, 1983 (26 pages)

P-2 Letter from Stanley Shwidock, August 21, 1984

P-3 Letter from Dan Geiger, July 20, 1984

P-4 Letter from Frank J. Livelli, August 6, 1984

P-5 Letter from John W. Tawney, August 2, 1984

P-6 Letter from Gerald A. Greenberg, July 1984

P-7 Letter from Allen McClain, May 25, 1984

P-8 Letter from Philip Slipyan, June 11, 1984

P-9 Letter from Edith G. Sherman, July 19, 1984

P-10 Letter from John Nittolo, July 10, 1984

P-11 Letter from Dorothy R. Williams, May 22, 1984

P-12 Letter from Michele T. Palumbo, July 19, 1984

P-13 Letter from Alexandra Moise, July 19, 1984

P-14 Letter from Ruth A. Curtis, July 17, 1984

P-15 Letter from Diane M. Bird, September 4, 1984

P-16 Letter from Bill Cannon

P-17 Letter from Kathleen Roe

R-1 State of New Jersey v. Robert Anderer and Ann D. [sic] Anderer, Superior Court of New Jersey, Law Division - Criminal, Indictment number I1552-80-M-3, filed August 20, 1981 (7 pages)

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WITNESS LIST

FOR THE PETITIONER:

Anne C. Anderer
Robert E. Anderer
Dan P. Geiger
Gerald A. Greenberg
Wilbur Howell
Norman Jackson
John J. Nittolo
Michele Palumbo

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-197
LICENSE NO. 03450-21
OAL DOCKET NO. CCC 6883-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

NICHOLAS ATHENS,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission) resolving the complaint by the Division of Gaming Enforcement against Nicholas Athens for a violation of N.J.S.A. 5:12-100(n); and the Commission having considered the entire record of these proceedings at its public meeting of June 19, 1985,

IT IS on this 20th day of June 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that Nicholas Athens pay a civil penalty in the amount of $500, due and payable upon receipt of an invoice from the Commisson's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Nicholas Athens's casino employee license is suspended for seven (7) working days, to be effective as follows: June 22, June 25 through and including June 29, and July 2, 1985; and

IT IS FURTHER ORDERED that during this period of suspension Nicholas Athens shall not be entitled to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that copies of this final order be served upon Nicholas Athens, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6883-84

AGENCY DKT. NO. 84-197

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

NICHOLAS ATHENS,

Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Edward M. Thompson, Esq., for respondent (Callaghan and D'Amico, attorneys)

Record Closed: March 21, 1985 Decided: May 6, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on June 1, 1984, seeking imposition of an appropriate sanction, pursuant to sections 100n and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's alleged gaming at a licensed casino. The issues to be determined in this matter are as follows:

> Whether the respondent gambled at a licensed casino on April 29, 1984, in violation of section 100n of the Casino Control Act, and, if so, what appropriate sanction should be imposed, pursuant to section 129 of the Act.

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PROCEDURAL HISTORY

On June 26, 1984, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On September 11, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.. A prehearing conference was held on October 25, 1984, and following two adjournments for good cause, the hearing was held on March 21, 1985.

FINDINGS OF FACT

The respondent is the holder of Casino Employee License No. 03450-21, issued by the Casino Control Commission on June 1, 1979. He is presently employed by Bally's Casino as a floorperson supervisor, and he has worked at Bally's for approximately five years. Prior to that, the respondent was employed by Caesar's Casino as a dealer for approximately one year. At one time, the respondent supervised the scheduling of dealers on the day shift at Bally's.

It is undisputed that the respondent was present on the gaming floor at Harrah's Casino on April 29, 1984. With him were two friends, Kostas Vezriannis and Bill Spirokostas. The respondent's presence on the gaming floor at Harrah's was observed by surveillance officer Lawrence Daly and by Daniel Walsh of the New Jersey State Police, assigned to the Division of Gaming Enforcement Casino Investigation Unit.

The preceding evidence is undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns whether the respondent was gaming at Harrah's Casino on April 29, 1984. Lawrence Daly, who is now a surveillance officer at the Tropicana Casino and who was a surveillance officer at Harrah's Casino on April 29, 1984, testified on behalf of the Division of Gaming Enforcement that while he was in the process of following a suspect on the casino floor, he observed the respondent gaming at craps. Mr. Daly had previously been employed at Bally's Casino as a dealer and he had known the respondent to have been the scheduling supervisor at Bally's.

According to Mr. Daly, he observed the respondent from all sides for approximately ten minutes. The respondent was holding gaming chips in his hand and he had chips stacked at the rail in front of him. The respondent was apparently with friends at the craps table, but he was definitely playing, and not instructing his friends. Since Mr. Daly knew that the respondent was a licensed casino employee, he telephoned his supervisor from a telephone which was approximately thirty feet from the craps table and asked that videotaping be commenced. The Division of Gaming Enforcement was then notified to send an investigator to the video monitor room. It was the testimony of Mr. Daly that Detective Daniel Walsh arrived and the two then used a video monitor to observe the respondent gamble for approximately twenty minutes more. Detective Walsh then proceeded to the casino floor and Mr. Daly observed the detective escort the respondent away from the craps table. Mr. Daly acknowledged that the videotape of the incident was subsequently destroyed because the Division of Gaming Enforcement had not informed Harrah's surveillance office to retain the tape.

Testifying on cross-examination, Mr. Daly acknowledged that he had been a dealer at Bally's Casino between September 1982 and February 1984. The respondent had been Mr. Daly's scheduling supervisor, but Mr. Daly testified credibly that the only complaint he had with scheduling at Bally's was that he wanted to work more days than he was being given as a part-time employee. He left Bally's for full-time employment at Harrah's, and his employee separation report from Bally's indicated that he had left for personal reasons (Exhibit R-1). Mr. Daly had approximately eight weeks of surveillance training and had been on the floor of Harrah's as a surveillance officer for approximately two weeks at the time of the incident. He has subsequently left Harrah's for employment at the Tropicana Casino.

Detective Daniel Walsh of the New Jersey State Police, assigned to the Division of Gaming Enforcement, was covering several casinos on April 29, 1984, when he was dispatched to Harrah's Casino to investigate an allegation that a casino employee was wagering. Detective Walsh proceeded to the Harrah's surveillance room where he observed Craps Table No. 9, Pit 6, on a video monitor. At that time, he saw that the respondent had chips in his hand and that he was placing bets at the craps table. According to the detective, he then left the video monitor room and approached the respondent at the craps table and identified himself. He then asked the respondent to come with him. The respondent was gambling and he asked the detective to wait until the point was made because he had some bets out and he wanted to see what happened. The

detective accommodated the respondent and they waited for the play to end and then they proceeded to the Division of Gaming Enforcement office.

At the Division of Gaming Enforcement office, the respondent informed Detective Walsh that he was on vacation and that he was gambling because he was not officially working during his vacation period. The respondent told the detective that he had been gambling for approximately twenty minutes but had not won or lost. Detective Walsh acknowledged that since the respondent had admitted that he had been gambling, it was the detective's thought that the videotape need not be kept. Therefore, the detective advised the Harrah's staff that the videotape could be put back into circulation and reused. Testifying on cross-examination, Detective Walsh acknowledged that he did not know the size of the bets which were placed by the respondent. However, the detective stated that he was able to observe that the respondent had $5.00 and $1.00 chips in his hands and that he was placing bets. The detective did not observe the respondent throw the dice. According to Detective Walsh, the respondent never disputed that he had been gambling.

Testifying on behalf of the respondent, Kostas Vezriannis stated that it was his idea that the respondent and their friend, Bill Spirokostas, go to Harrah's so that Mr. Vezriannis could play craps for the first time. According to the witness, he got twenty $5.00 chips and put the chips on the rack in front of him at the craps table. The respondent then stood behind him and explained how much various bets would pay. It was the testimony of Mr. Vezriannis that the respondent did not hold any chips in his hand, did not place any bets, and did not provide any money to be bet.

Bill Spirokostas also testified on behalf of the respondent. According to Mr. Spirokostas, he watched his friend, Mr. Vezriannis, gamble for five or ten minutes and then he observed some other tables. At no time did he see the respondent place a bet, although he did note that the respondent explained some bets to Mr. Vezriannis.

Testifying on his own behalf, the respondent stated that he had been in charge of the scheduling of dealers at Bally's at one time and that he could recall having to call Mr. Daly, who was then a dealer, and have him work on days when Mr. Daly had been scheduled to be off. He remembered that Mr. Daly had complained about these assignments.

It was the testimony of the respondent that he went to Harrah's Casino with his two friends on April 29, 1984, which was the beginning of his one-month vacation. According to the respondent, he helped his friend by explaining the odds and the various bets which could be made. He further helped by moving his friend's chips for him if the bet which was made wasn't right. Someone then called the respondent's name, tapped him on the shoulder and asked him to follow. The respondent stated that he asked, "What is the problem" and he was told, "Are you aware you are gambling?" According to the respondent, he then denied that he had been gambling and when asked whether he was winning or losing, he said, "Neither." The respondent testified that the Division detective may have misunderstood his answers to the detective's questions and the respondent stated that he told the detective the matter would be taken to court.

Testifying on cross-examination, the respondent stated that he had been Bally's scheduling supervisor for a year and several months. He acknowledged that many employees had spoken to him about their scheduling problems.

The testimony of surveillance officer Daly was straightforward and sincere. His credibility has not been placed in doubt by any of the evidence concerning his relationship with the respondent when the respondent was his supervisor at Bally's. The testimony of Detective Walsh was straightforward and sincere, and entirely worthy of credit. He had ample opportunity to observe the respondent and his testimony that he observed the respondent gambling is persuasive. In contrast, the testimony of the respondent and his two witnesses is less compelling. Having reviewed all of the testimony and other evidence offered in this matter, and having assessed the credibility of the witnesses, I further **FIND** that the respondent, a licensed casino employee, was wagering at craps at Harrah's Casino on April 29, 1984.

CONCLUSIONS OF LAW

Section 100n of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) provides:

> It shall be unlawful for any casino key employee, other than a junket representative, or any casino employee, other than a bartender, waiter, waitress, or other casino employee who in the judgment of the Commission is not directly involved with the conduct of gaming operations, to wager at any game in any casino in this state.

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It is undisputed that the respondent was observed on the floor of Harrah's Casino on April 29, 1984. In addition, I have found as fact that the respondent was gambling at craps on that day. Therefore, I **CONCLUDE** that the respondent, a licensed casino employee, gambled at a licensed casino on April 29, 1984, in violation of section 100n of the Casino Control Act.

Pursuant to section 129 of the Casino Control Act, the Casino Control Commission may, after appropriate hearings and factual determinations, revoke or suspend a casino employee license for the commission of a violation of the Casino Control Act, and may:

> assess such civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed $10,000.00 in the case of any individual licensee or registrant... N.J.A.C. 5:12-129(5).

The record indicates that this matter concerns the first complaint alleging a violation of section 100n by the respondent. Having concluded that the respondent has violated section 100n, I further **CONCLUDE** that to punish the misconduct and to deter future violations, a civil penalty in the amount of $500.00 should be imposed. Finally, I further **CONCLUDE** that the respondent's casino employee license should be suspended for a period of seven working days.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent pay a civil penalty in the amount of $500.00, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control, and it is further **ORDERED** that the respondent's casino employee license be suspended for seven working days, effective upon the entry of a final order in this matter.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 6, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

5 6 85
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 0 8 1985
DATE

Ronald L. Parkerson
OFFICE OF ADMINISTRATIVE LAW

bc

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INVENTORY OF EXHIBITS

For the Petitioner:

P-1 Report of Detective Walsh, dated April 29, 1984.

P-2 Letter of Resignation, dated January 29, 1983.

For the respondent:

R-1 Employee Separation Report.

R-2 Letter from Harrah's Casino, dated March 14, 1985.

WITNESSES

For the petitioner:

Lawrence Daly
Daniel Walsh.

For the respondent:

Kostas Vezriannis
Bill Spirokostas
Nicholas Athens.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-83
OAL DOCKET NO. CCC 5222-82

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. ATLANTIC CASINO TRAINING ACADEMY AND ANTHONY STOLFO, Respondents.	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on April 23, 1984, recommending that the respondents be "reprimanded in a nondisciplinary context" for an error in judgment which did not constitute a violation of the Casino Control Act or Commission regulations or reflect adversely on the good character, honesty, integrity, business ability and experience of the respondents and ordering that the complaint be "denied and dismissed with prejudice"; and no exceptions or objections to the initial decision having been filed by the parties; and the Commission having considered the entire record of these proceedings at its public meeting of July 25, 1984, resolved to modify the initial decision,

IT IS on this 10th day of May 1985, ORDERED that the initial decision be and hereby is modified as follows:

1. The release by the respondents of the certificate of course completion and diploma of Vincent Giovinetti, a student of Atlantic City Training Academy who had not fulfilled the requirements of the electro-mechanical slot machine course, indicates a lack of business ability pursuant to N.J.S.A. 5:12-92(a), -92(b), -89(b)(3), N.J.A.C. 19:44-3.1(a)(3) and -4.1(a).

2. The lack of business ability of the respondents warrants the issuance of a letter of reprimand pursuant to N.J.S.A. 5:12-130(8) to be made part of their permanent record on file with the Commission.

3. Reference in the initial decision to the dismissal of the complaint with prejudice is rejected as inconsistent with the conclusions of law and imposition of sanction made by the Commission.

IT IS FURTHER ORDERED that this Final Order serve as a letter of reprimand to be made part of the respondents' permanent record on file with the Commission for the reason set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Atlantic City Training Academy, Anthony Stolfo, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

PARTIAL INITIAL DECISION

OAL DKT. NO. CCC 5222-82

AGENCY DKT. NO. 81-83

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,

Petitioner

v.

VINCENT C. GIOVINETTI, ATLANTIC CASINO TRAINING ACADEMY, AND ANTHONY STOLFO,

Respondents.

APPEARANCES:

Edward P. Busichio, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Atlantic City Training Academy and Anthony Stolfo—No Appearance

Record Closed: February 10, 1983 **Decided:** March 25, 1983

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Vincent C. Giovinetti, Atlantic Casino Training Academy and Anthony Stolfo, respondents, which alleged that they committed various violations of the Casino Control Act and which sought revocation of Mr. Giovinetti's casino employee licenses (alcoholic beverage employee, slot attendant and slot attendant supervisor—license number 1549-21) and casino key employee licenses (coin cage supervisor and slot shift manager—license no. 602-11); Atlantic Casino Training Academy's gaming school license (license no. 8-60) and Mr. Stolfo's status as a qualifier thereof, pursuant to section 129 of the Casino Control Act. The respondents opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on December 18, 1981. On March 23, 1982, all three respondents filed an answer and requested a hearing. On May 19, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT AND CONCLUSIONS

On June 2, 1982, Donald G. Targan, Esq., withdrew as counsel for Vincent Giovinetti. However, Mr. Targan remained as counsel for Atlantic Casino Training Academy and Mr. Stolfo.

A prehearing conference was scheduled for 2:00 p.m. on September 13, 1982, at the Office of Administrative Law, 88 East State Street, Trenton, New Jersey. All parties were properly notified of the scheduled prehearing by the Office of Administrative Law. On the scheduled date, Mr. Giovinetti appeared and participated in the conference. However, neither Atlantic Casino Training Academy or Mr. Stolfo, nor any representative on their behalf, appeared. Deputy Attorney General Busichio appeared and remained for one hour.

By letter dated October 18, 1982 (copy attached) and addressed to Mr. Targan, the respondents (Atlantic Casino Training Academy and Mr. Stolfo) were asked to submit their reasons for their nonappearance. By letter dated January 11, 1983, Mr. Targan advised that he was no longer counsel for Atlantic Casino Training Academy or Mr. Stolfo. Accordingly, by letter dated January 20, 1983 (copies attached), the Atlantic Casino Training Academy and Mr. Stolfo were asked to submit their reasons for their nonappearance. No response to that inquiry has been received.

I **FIND** that the respondents, Atlantic Casino Training Academy and Mr. Stolfo, failed to appear at the scheduled prehearing conference and did not provide any explanation for their failure to appear. Therefore, I **CONCLUDE** that these respondents have abandoned their request for a hearing. I further **CONCLUDE** that this abandonment constitutes an admission of all matters and facts contained in the Division's complaint, pursuant to N.J.S.A. 5:12-108(d).

DISPOSITION

It is **ORDERED** that the gaming school license (license no. 8-60) held by the Atlantic Casino Training Academy be and hereby is **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 25, 1983
DATE

Richard L. Voliva
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

[illegible]
DATE

[illegible]
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

March 30, 1983
DATE

Ronald L. Lasken
OFFICE OF ADMINISTRATIVE LAW

fms/e

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-187
OAL DOCKET NO. CCC 7455-84
REGISTRATION NO. 23120-40

STATE OF NEW JERSEY, DEPT. OF LAW & PUBLIC SAFETY, DIV. OF GAMING ENFORCEMENT,	:
Complainant	:
v.	:
WILLIAM S. BAGLIVO	:
Respondent.	:

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 24, 1985,

IT IS on this 10th day of May 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement, and the Office of Administrative Law within ten (10) days of the hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7455-84
AGENCY DKT. NO. 84-187

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner,
v.
WILLIAM S. BAGLIVO,
Respondent.

Anthony D'Elia, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Guy S. Michael, Esq. (Brown & Michael), for respondent

Record Closed: January 25, 1985 Decided: March 14, 1985

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 31, 1984, the Division of Gaming Enforcement (Division) filed a complaint before the Casino Control Commission (Commission) seeking revocation of respondent's casino hotel employee registration, alleging that on June 9, 1981, respondent was indicted for one count of conspiracy to commit robbery contrary to N.J.S.A. 2C:5-2, and one count of robbery with threatened bodily injury, contrary to N.J.S.A. 2C:15-1a(2) and further, that respondent was convicted of one count of N.J.S.A. 2C:15-1a(2) on October 28, 1981.

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Respondent filed a Notice of Defense with the Commission on September 7, 1984. The matter was thereafter transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference resulted in the entry of a prehearing order by Administrative Law Judge Richard L. Voliva, Jr. on November 21, 1984. The prehearing order defined the following issues to be addressed at the hearing:

1. Is respondent disqualified from registration as a result of his conviction of N.J.S.A. 2C:15-1a(2) which is a statutory disqualifying offense pursuant to section 86c(1) of the Casino Control Act (Act)?

2. In the event that the Division establishes that respondent has committed a statutory disqualifying offense, respondent shall be permitted to affirmatively demonstrate his rehabilitation pursuant to section 91d of the Act.

3. Whether the Division's complaint is barred by the affirmative defenses of laches and estoppel.

A hearing was held on January 4, 1985. The record remained open in order to permit respondent the opportunity to submit additional supporting documentation. The record was closed upon the receipt of and subsequent marking of the documents (R-1 through R-5) into evidence on January 25, 1985.

FACTUAL FINDINGS

Respondent holds a casino hotel employee registration. He is 26 years old and is currently employed by the Atlantic City Gold Rush Corporation, a business enterprise owned by Roger Jakubowski. Respondent is the vice-president in charge of physical operations of the business. The corporation owns eight Wendy's restaurants, and numerous boardwalk properties, arcades, amusements and restaurants. Respondent is responsible for handling most of the personnel matters, as well as the inventory, stock and maintenance of the stores. He is also responsible for handling the cash involved in the operation of the corporation. The Atlantic City Gold Rush Corporation employs 750 people during the peak business season, and approximately 450 people during the off-season.

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In 1972, when respondent was approximately 10 years old, he resided in Camden County with his mother, father, brothers and sisters. In addition to owning several small businesses in Camden County, respondent's father worked for the Country Squire Motel in Cherry Hill. Respondent's father was killed in an armed robbery attempt at the motel in 1972. The death of respondent's father had a radical negative impact upon the Baglivo family finances, resulting in the repossession of the family automobiles, and forcing respondent, his mother and siblings to move out of their Camden County home. The family relocated to Ocean City, New Jersey, and respondent found himself accepting great responsibility for the care of his brothers and sisters while his mother pursued employment to support the family. Respondent watched his brothers and sisters while his mother worked, saw that they had their dinner, supervised their school work and was generally responsible for their care.

Roger Jakubowski has been a major influence in respondent's life. As a young child, respondent became acquainted with Mr. Jakubowski while residing in Camden County. When respondent was approximately 12 or 13 years old, Jakubowski started a business on the Ocean City, New Jersey boardwalk. Respondent asked Jakubowski for a job and commenced working for him every day after school. Respondent's initial employment duties in Jakubowski's boardwalk business were to perform whatever tasks were needed, such as taking out the trash, sweeping the floors, running errands, giving change in the arcade. Respondent sought this employment not only for financial reasons, but for the purpose of adding dimension to his life which for the preceding few years had been occupied by attending school, taking care of his siblings, and watching television. Most of respondent's earnings were contributed to his mother for support of the family, with the remainder retained by respondent to purchase his clothing and personal items. Respondent continued to work for Jakubowski and by the time he had attained the age of 17 years he was earning a very comfortable salary, had received a new car from his employer, and had substantially increased his employment responsibilities, i.e., he was running several businesses on the Ocean City boardwalk and was responsible for overseeing the 80 employees of the businesses which at that time consisted of several restaurants (including a seafood restaurant that could serve 300 people) two fast food restaurants, several arcades, as well as an amusement pier. These businesses were essentially cash businesses and respondent was responsible for maintaining the security of those businesses.

During the course of his employment, respondent continued to attend high school and was an "A" student until the 11th grade. Respondent openly acknowledged that by his junior year of high school, he was starting to become "a little bit rebellious." He was frequently absent from school, while conveying to Mr. Jakubowski the impression that he was attending school on a regular basis. During his senior year of high school, he was expelled several times. Respondent did not graduate from the public high school he was attending, but eventually completed his high school education in 1978 through attending Atlantic Community College and making up his high school credits.

Respondent continued to remain involved in every detail of managing Mr. Jakubowski's business enterprises which had increased substantially over the years. When respondent was approximately 19 or 20 years old, Jakubowski purchased a nightclub in Somers Point, New Jersey. Respondent became fully involved in the management of the nightclub, doing all the purchasing, and hiring of the employees and the bands who performed in the club. At this point in his life, respondent began to drink. His attitude toward life began to change and he indulged in behavior which was out of character for him. In particular, he began arriving at work late and failed to meet his employment responsibilities. He found himself arguing frequently with Mr. Jakubowski. Respondent pursued a course of personal dissipation which was manifested through wasting his money and spending substantial time drinking in local bars. On one particular occasion, respondent became so drunk that he injured himself, breaking his leg.

Respondent began to feel that he should be out on his own, doing something by himself. Mr. Jakubowski began to perceive that he could not trust respondent and that he could not depend on him to run his businesses. During the latter part of 1980, Jakubowski decided that respondent should leave his employment. After the termination of his job, respondent continued to party and drink excessively. He did not actively seek employment, apparently under the impression that he would ultimately be able to return to work for Mr. Jakubowski. Respondent described this period of his life as a time when he overcompensated for his early teenage years which he had spent caring for his family and working. Respondent freely acknowledges that he indulged in excesses which were uncalled for.

At the time that respondent left Mr. Jakubowski's employment, he had a brand new Cadillac and lived in a $100,000 condominium. He had been making several hundred dollars a week which he was able to utilize for spending money, since most of his other financial obligations were taken care of through Mr. Jakubowski's business. When he left Mr. Jakubowski's employment, his income suddenly ceased, he lost his condominium (causing him to move in with his mother), and had difficulties meeting his car payments. Respondent proceeded to spend all of his savings. He described himself during this period of time as being depressed, disillusioned and self-destructive.

After leaving Mr. Jakubowski's employment, respondent met a person known as Daniel Hughes. Sometime during March 1981, respondent had sold some of his personal possessions in order to raise money, since his car was about to be repossessed. Unfortunately, he used these funds to support his partying and drinking. On April 13, 1981, respondent and Daniel Hughes went out together during the latter part of the afternoon and made the rounds of several bars. During the evening they went to Playboy Hotel Casino where they commenced to gamble. They also became very drunk and engaged in a conversation about "hoodlums and gangsters" and proceeded to discuss alternative ways to earn a living (other than through working) such as selling drugs or stealing. Respondent initially did not take this conversation very seriously. However, as the evening progressed and the drinking continued (they also had taken some drugs), Daniel Hughes challenged respondent to a "dare." Would resondent have enough nerve to rob a Cumberland Farms convenience store in Margate, New Jersey? Respondent boasted that he was not afraid of anything. Eventually they left the casino and proceeded to drive around. They drove up to a 7-11 convenience store in Somers Point, New Jersey, at which point in time Daniel Hughes renewed his dare. Respondent went into the store and purchased and paid for some food items, not intending to commit a crime. Unfortunately, on the spur of the moment, respondent asked the cashier for the money in the cash register. Respondent had his hand in his coat pocket which he described as ". . .holding it up, somewhat, not exactly pointing it. . ." Respondent claims that he did not threaten the cashier and he does not recall that she appeared to be particularly frightened, although, respondent admits that he cannot remember a lot of the details of the evening. This robbery yielded a grand total of $30, which respondent threw at Daniel Hughes as they drove away in respondent's automobile. Respondent described himself as disgusted and very upset. Approximately 20 minutes later, respondent and Hughes were arrested. They spent that night and most of the following day in jail. Respondent explained that it was

not until the day after the arrest that he realized the seriousness of the robbery offense which he committed. Respondent asssumed he was probably going to be charged with drunken driving and possibly a misdemeanor. Upon being released from jail, respondent made an immediate decision that he had to radically change his life. He had previously completed a casino employee license application which he proceeded to file. He immediately obtained a job at the Golden Nugget Hotel Casino as a relief cook.

On June 9, 1981, respondent was indicted for conspiracy to commit robbery in violation of N.J.S.A. 2C:5-2 and robbery with threats of immediate bodily harm, contrary to N.J.S.A. 2C:15-1a(2) (P-1). A toy gun was found under the seat of respondent's automobile on the night of the arrest, although, respondent denied at the time of the criminal trial, as well as at this hearing, that the gun was utilized during the robbery. I found his testimony as to the toy gun to be credible and undisputed. Respondent went to trial on the robbery charges and on October 28, 1981 was convicted after a trial by jury of robbery with threats of immediate bodily injury. The conspiracy charges were dismissed. He was sentenced to six month's imprisonment, five year's probation, 100 hours of community service, and a fine of $3500. The fine has been paid in full. He commenced his jail term at the end of November 1981 and remained in jail until the first week of January 1982 at which time he was released during the day to participate in a work release program by working for Mr. Jakubowski. Respondent had renewed his relationship with Mr. Jakubowski, who had come to him after the arrest to offer him help and general advice. Jakubowski helped respondent find a lawyer for the criminal trial. When Jakubowski reopened his relationship with respondent, respondent further realized the severity of the mistakes he had made in pursuing a meaningless life of partying and drinking resulting in the loss of his job and the commission of a crime.

While participating in the work release program, respondent ran several of Mr. Jakubowski's stores in Atlantic City and a restaurant at the Atlantic City Municipal Bus Terminal. Respondent would leave the Mays Landing jail at 6:00 a.m. to go to work, returning to jail at midnight. On one particular evening while working at the bus terminal restaurant, a young woman came into the premises and proceeded to tell respondent about her boyfriend in Philadelphia who had sold some gold cups to a pawn shop for a substantial amount of money, which he was now utilizing to gamble in the casino. Apparently the boyfriend was drunk, had hit the woman who became upset and left him. As she told this story to respondent, respondent remembered reading an article in the newspaper that

same day, about gold chalices being stolen out of several Philadelphia churches. Respondent felt that the young woman's story should be reported, and telephoned his attorney, who called the Atlantic County Prosecutor's Office on his behalf. As a result of respondent's intervention, several arrests were made resulting in breaking up a robbery ring involved in stealing items from various Philadelphia churches and synagogues. As a result of respondent's assistance, the Atlantic County Prosecutor's Office filed a motion to reduce respondent's sentence and release him from jail. The motion for reconsideration of sentence was granted on March 5, 1982, and the sentence was reduced to 3 years' probation. The county jail term was to be equal to the time served as of March 5, 1982, and respondent was immediately released from jail.

Since his release, respondent has continued to work steadily for Mr. Jakubowski, and has not had any further criminal problems. Respondent would like to retain his registration because he feels he has been rehabilitated, and in the event that he should someday desire to work for a casino, he does not want to be precluded from pursuing such an opportunity. He feels that retention of registration, is a statement that he has improved his life and that he is a person who can be trusted.

Respondent has terminated his association with Daniel Hughes, and has stopped drinking since the robbery. He has only indulged in alcohol at two Christmas parties since the robbery. He does not take drugs.

Roger Jakubowski owns Pleasant Valley Investments and Atlantic City Gold Rush. Pleasant Valley Investments is a land holding company (with extensive holdings) and an operating company of amusement piers and amusement type devices on the Ocean City and Atlantic City boardwalks. Atlantic City Gold Rush is a part of Pleasant Valley Investments and is the operating company of Jakubowski's restaurants consisting of the eight Wendy's restaurants, several restaurants on the Atlantic City and Ocean City boardwalks, and another Wendy's restaurant which is currently under construction.

Jakubowski has been self-employed since the age of 17 years, when immediately after high school he went into business working with his father. At age 23, he took over his father's business. His first acquaintance with respondent was while operating his butter and meat business in Camden, New Jersey, and he recalls that respondent, as a young boy, used to watch him load the meat trucks. Respondent was

apparently fascinated with the fact that Mr. Jakubowski would physically load and drive the meat truck, yet at the end of the day would drive home in his Rolls Royce automobile. Jakubowski had previously retired from the butter and meat business and had not worked for several years, thinking he would have enough money to survive for the rest of his life. Several years after his retirement, he realized that he had to go back to work, and he relocated to Ocean City, New Jersey, where he initially opened one small restaurant.

Jakubowski recalls the circumstances under which respondent, at age 12 or 13 sought employment from him in his Ocean City business. When respondent asked him if he could work for him, Jakubowski said he had a job for anyone who wanted to work, and said he would teach respondent all about work. Jakubowski took a personal interest in respondent and not only taught him all about the business which continued to grow and expand, but he bestowed respondent (a teenager) with increasing responsbility for running the businesses. It is clear that Jakubowski is a man who not only works extremely hard himself, but expects the same hard work of those employees whom he trusts and takes under his wing. Jakubowski's theory of disciplining his special employees is to punish the employee by not permitting the employee to work for him for a period of time. He perceives this as a form of punishment based upon his conclusion that the employee would never find a comparable employer, insofar as Jakubowski rewards his hard working and trusted employees with substantial benefits early on in their careers. Jakubowski acknowledges that working for him is demanding, but worth it.

Jakubowski explained his perception of the circumstances under which respondent initially left his employment. Jakubowski feels that the acquisition of the Somers Point bar was a serious mistake in his business career, and that the bar environment has been detrimental to many of his employees, who by the very nature of the bar business were subjected to overwhelming temptations. When Jakubowski asked respondent to manage the bar, it initially did not occur to him that the bar business would have a negative impact upon respondent. When Jakubowski perceived that he could no longer trust respondent he told him they would have to part company. If Jakubowski perceives that an employee can no longer be trusted, his philosophy is "There is no question, no discussion about it, he is gone. You know what I mean? When I trust somebody, I trust somebody."

After Jakubowski discharged respondent, he began to sense that perhaps he had been too harsh with him. At some point in time, he spoke to respondent's mother who told him about respondent's robbery of the 7-11 Store. When Jakubowski initially heard the story, he felt that respondent was stupid, that he had to pay for his mistake, and that he would not help him. Several weeks later, he changed his mind, and went to see respondent, and offered to help him, so long as respondent straightened himself out. Jakubowski's change of heart occurred after evaluating the situation, and realizing that he himself could have a problem someday, and might need help from a friend.

In describing respondent's present responsibilities, Jakubowski stated that respondent is the director of operations. He is the only individual (other than Jakubowski's father) whom Jakubowski has trusted with possession of the keys to certain amusement machines which involve large amounts of cash. He described respondent as one of two people whom he trusts to check the cash registers. There is no question but that Jakubowski trusts respondent implicitly. He also trusts respondent with the responsibility of evaluating employees before they are dismissed or fired from his employment. He credits respondent with having hired many good sub-managers.

Jakubowski described respondent's current workday as consisting of telephoning the office as soon as he wakes up. Respondent then goes out into the field to oversee the various aspects of the businesses, with the workday sometimes not ending until 3:00 a.m. the following morning. Jakubowski expects total concentration and hard work from respondent, who since the arrest has devoted himself exclusively to working for Jakubowski.

Jakubowski has observed respondent mature substantially since returning to work for him. While he recognizes the personal devastation and tragedy which occurred in respondent's life during the several months prior to respondent's arrest, Jakubowski perceives that the difficult times that respondent experienced were an educational experience for respondent who learned from his mistakes.

Julian Aiscowitz is employed as the executive vice-president of Jakubowski's business. He has worked for the business for approximately three years, having worked his way up the corporate ladder. He has known respondent for approximately three years, and works closely with him on a daily basis. He described respondent as highly competent and responsible with regard to his employment. He credibly described respondent's integrity as ". . .way above board."

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-91b provides that a casino hotel employee registration may be revoked, suspended, limited or otherwise restricted upon a finding that a registrant is disqualified pursuant to the criteria set forth in N.J.S.A. 5:12-86. N.J.S.A. 5:12-86c(1) provides that a conviction of certain enumerated offenses may result in disqualification from registration. The offense of robbery (N.J.S.A. 2C:15-1) is an enumerated offense, which pursuant to the Act is referred to as a statutory disqualifying offense. It is undisputed that respondent was convicted of N.J.S.A. 2C:15-1a(2), robbery with threatened bodily injury, which is a statutory disqualifying offense.

Notwithstanding a conviction of a statutory disqualifying offense, N.J.S.A. 5:12-91d provides that a casino hotel employee registrant shall be afforded the opportunity to affirmatively demonstrate his rehabilitation. The following factors are to be considered with regard to whether a registrant has demonstrated his rehabilitation:

1. The nature and duties of the registrant's position;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense:

5. The age of the registrant when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense;

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who have or have had the registrant under their supervision.

There is no question but that the robbery offense for which respondent was convicted is very serious. The fact that the robbery only yielded $30 does not in any way minimize the serious nature of the offense. What is significant here is the act itself, i.e., one in which respondent robbed a convenience store through demanding money of the store's employee and creating the impression that he may have been armed. This was clearly not a victimless crime. The fact that respondent had been drinking and taking drugs on the day of the offense, does not in any way excuse his behavior or mitigate the serious nature of the offense.

Rehabilitation is an issue which must be considered on a case by case basis. In evaluating the serious nature of the offense, the fact that the offense was an isolated incident is significant. He has not engaged in repeated criminal behavior. The evidence presented by respondent was detailed and complete. Respondent, at the age of 26 years, has experienced certain events, which are somewhat unique to many young men of his age. In particular, I refer to the tragic death of his father, which thrust him into a situation wherein he was forced to accept substantial family responsibility at a very young age. Respondent thereafter, during his high school years, displayed exceptional business ability as well as a penchant for hard work. His regrettable capitulation at a youthful age to the temptations presented by having substantial money, expensive possessions, and the opportunity to succcumb to a fast lifestyle dominated by drinking and partying, cannot be condoned, rationalized or explained away. Respondent testified openly about his period of self-destruction. He freely admitted his mistakes, which he attributed to his inability to keep in proper perspective the substantial temptations to which he was exposed at a young age. However, I wish to emphasize that respondent accepts full responsibility for his physical and moral dissipation without making excuses for himself. This conclusion is based upon not only respondent's testimony, but having had the opportunity to observe his demeanor and the intensity with which he testified. There is no question but that respondent sincerely regrets his mistakes which culminated in the commission of one criminal act.

Also of significance with regard to respondent's rehabilitation, is the fact that shortly after the commission of the robbery, respondent resumed his employment with Mr. Jakubowski and continued to maintain an employment position requiring substantial responsibility and trustworthiness. There is no question but that Roger Jakubowski is an employer who is demanding and exacting, and one who will not tolerate an employee's

personal shortcomings which would in any way interfere with the operation of his business. He made that very clear when he informed respondent during the latter part of 1980 that it would be best if they parted company. The fact that respondent has resumed employment with Mr. Jakubowski, and there has been absolutely no evidence of a reversion to his former unfortunate lifestyle, is further evidence of respondent's rehabilitation.

I therefore **CONCLUDE** that respondent has rehabilitated himself pursuant to N.J.S.A. 5:12-91d as the concept of rehabilitation applies to a registration. This conclusion is based upon the opportunity to listen to and observe respondent testify credibly, and also takes into account the testimony of Mr. Jakubowski, Mr. Aiscowitz, as well as respondent's reference letters. He has also completed his probation and paid his fine. The passage of time has afforded respondent the opportunity to demonstrate that he has matured and learned from his mistakes. I note that I have not commented upon the first criteria with regard to rehabilitation, i.e., the nature and duties of the registrant's position, insofar as respondent is not currently working as a registrant. However, I simply note that a significant aspect of respondent's rehabilitation relates to his resumption of significant employment responsibility. It is reasonably safe to assume that the degree of trustworthiness and responsibility of respondent's current employment position is at least equal to, if not greater than that required for any position which requires a casino hotel employee registration.

Respondent has raised an alternative argument in support of retention of his registration alleging that the Division's complaint should be dismissed on the grounds of laches and estoppel for reasons:

1. The Division waited too long after respondent's arrest to file the revocation action;

2. The Division previously took action on respondent's casino employee license application in June 1982, at which time the Division filed a letter report objecting to respondent's licensure.[1] The exclusive objection to

[1] At the time of the objection to respondent's licensure, he held a registration. Respondent did not receive a license, although the record is silent as to whether respondent requested a hearing regarding his license application, or whether he simply declined to pursue the license after receiving the Division's letter report.

licensure was respondent's April 13, 1981 arrest. The recommendation to deny the license was silent as to respondent's registration, and therefore, respondent argues that the Division "implicitly or explicitly" is precluded from now taking action against his registration. Respondent argues that the passage of some three and one-half years since the robbery occurred prejudices respondent's ability to adequately present the nature and circumstances of respondent's criminal behavior.

Respondent argued that it is not necessary to address the motion to dismiss in the event that the issue of rehabilitation was resolved in his favor. However, since the Casino Control Commission is empowered to make a final decision in this matter pursuant to N.J.S.A. 52:14B-10, in the event that the Commission shall reject the conclusion set forth in this initial decision with regard to rehabilitation, the issue of laches and estoppel must be addressed.

Substantial case law exists which suggests that the concepts of estoppel and laches are not applied against the State to the same extent as against private parties. O'Neill v. State Highway Dep't., 50 N.J. 307 (1967). Delay in and of itself is not grounds for estoppel. O'Neill, supra, 50 N.J. at 321. Likewise, the concept of laches requires that an unexplained delay in asserting a stale claim must be unreasonable, unexcusable, and must have caused substantial prejudice to the party making the claim. Allstate v. Howard Savings Inst., 127 N.J. Super. 479 (Ch. Div. 1974), Mitchell v. Alfred Hoffmann Inc., 48 N.J. Super. 396 (App. Div. 1958). In the present case, respondent demonstrated no substantial prejudice by the failure of the Division to seek revocation of his registration at the time that the Division recommended denial of his license application. Respondent suggested that the passage of time since the robbery made presentation of proofs difficult. However, the evidence presented at the hearing contradicts that assertion, insofar as respondent's presentation was thorough and detailed. There was no allegation that respondent needed to call additional witnesses who were unavailable, or that there was additional documentation to be presented which was also unavailable due to the passage of time. Further, as a practical matter, in order for respondent to retain his registration, once proofs were entered into the record that he was convicted of a statutory disqualifying offense, he had to affirmatively demonstrate his rehabilitation. One of the criteria for evaluating rehabilitation is the passage of time since the occurrence of the offense, taking into consideration respondent's behavior and activities

from the date of the offense until the date of hearing. In many instances, it is difficult for a registrant to demonstrate his rehabilitation from a statutory disqualifying offense if the attempt to show rehabilitation occurs shortly after the offense was committed. If anything, the passage of time actually helped respondent, rather than causing prejudice to him, since one of the major aspects of rehabilitation in respondent's case, has been that he has had adequate time to demonstrate that he has restored himself to a productive, crime-free life. The passage of time has also afforded him the opportunity to complete his probation and to make restitution, both of which are significant factors in determining that a person has been rehabilitated. I therefore **CONCLUDE** that respondent's motion to dismiss the complaint on the grounds of estoppel and laches is without merit.

ORDER OF DISPOSITION

It is hereby **ORDERED** that respondent shall retain his casino hotel employee registration, and that the Division's complaint for revocation is hereby **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 14, 1985
DATE

Valerie H. Armstrong
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

March 14, 1985
DATE

Bernadette P. Fripp
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 18 1985
DATE

Ronald L. Lakey/sm
OFFICE OF ADMINISTRATIVE LAW

ks58

LIST OF WITNESSES

FOR PETITIONER:

None

FOR RESPONDENT:

William S. Baglivo
Roger Jakubowski
Julian Aiscowitz

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1	Two count indictment In the Matter of State of New Jersey v. Daniel Patrick Hughes and William Steve Baglivo; Judgment of Conviction, dated March 8, 1982 (6 pages)
R-1	Letter from Martin L. Wismer, dated January 10, 1985
R-2	Letter, dated "January" from Tom Waldman
R-3	Affidavit of Martin Wismer, dated January 10, 1985
R-4	Letter from David S. Duncan, Jr., dated December 31, 1984
R-5	Affidavit of Edward Devlin, dated January 17, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 84-EA-48 &
84-149
OAL DOCKET NO. CCC 3872-84
APP. NO. 43297-22
REG. NO. 37601-40

APPLICATION OF HECTOR L. BERRIOS

FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY,
DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

HECTOR L. BERRIOS,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 2, 1984, recommending that the casino employee license application of Hector L. Berrios be granted and the complaint for revocation of his casino hotel employee registration be dismissed; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision with the Commission on December 3, 1984; and Hector L. Berrios having filed a reply thereto with the Commission, on December 19, 1984; and the Commission, after considering the entire record of these proceedings, having failed at is public meeting of January 23, 1985, to resolve by majority vote to affirm, reject or modify the Initial Decision,

IT IS on this 4th day of MARCH 1985, ORDERED that the casino employee license application of Hector L. Berrios be and hereby is granted and the complaint for revocation of his casino hotel employee registration be and hereby is dismissed pursuant to N.J.S.A. 52:14B-10, based upon the reasons set forth in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Hector L. Berrios and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3872-84

AGENCY DKT. NOS. 84-EA-48

AND 84-149

HECTOR BERRIOS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Robert DeGeorge, Esq., for petitioner (Paglione, Massi & DeGeorge, attorneys)

Ralph L. Fusco, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: September 17, 1984 Decided: November 1, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By letter dated February 21, 1984, the Division of Gaming Enforcement (Division), objected to petitioner's application for a casino employee license. Additionally, on May 7, 1984, the Division filed a complaint, seeking to revoke petitioner's casino employee registration, alleging that (1) petitioner was convicted of a statutory disqualifying offense, i.e., aggravated robbery; (2) the conviction is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4); and (3) petitioner failed to disclose the alleged conviction in his Personal History Disclosure Form-4, in violation of

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N.J.S.A. 5:12-86b. (The complaint also alleged that petitioner was convicted of felonious assault, but no specific relief as to that conviction was demanded in the complaint.)

In May 1984, petitioner requested a hearing. Pursuant to letter request of the Casino Control Commission (Commission), to the Office of Administrative Law, the license application and the revocation proceeding were consolidated for the purposes of a hearing.

The matter had been transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and a prehearing order entered on July 17, 1984, defined the following issues to be resolved at the hearing:

1. Whether petitioner as a casino employee license applicant can establish by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of section 89b(2) of the Casino Control Act, as incorporated in Section 90 of the Act.

2. Whether petitioner shall be denied a casino employee license based upon respondent's allegations in its letter dated February 21, 1984, that petitioner was convicted of two statutory disqualifying offenses (felonious assault and aggravated robbery) pursuant to N.J.S.A. 5:12-86c; and in determining if a license shall be issued, whether petitioner has affirmatively demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90h.

3. Whether petitioner should be denied a casino employee license for failure to accurately disclose an alleged conviction of a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86b.

4. Whether petitioner's casino employee registration shall be revoked based upon allegations of (1) a conviction of a statutory disqualifying offense(s) pursuant to N.J.S.A. 5:12-86c; and (2) failure to disclose information required by N.J.S.A. 5:12-86b; and (3) that the alleged conviction(s) is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).

5. Whether petitioner has demonstrated rehabilitation pursuant to N.J.S.A. 5:12-91d.

A hearing was held at the Ventnor City Hall, Ventnor, New Jersey, on September 17, 1984. Respondent who is of Spanish descent and can communicate in

English with some facility, but not with complete fluency, employed Rosa Maria Hernandez, a professional interpreter employed by Paraplus to assist him at the hearing. Ms. Hernandez has been a professional interpreter for the past five years and has interpreted at court proceedings in Burlington County and Camden County. Spanish is Ms. Hernandez' native language and she has spoken English for 21 years. I found Ms. Hernandez to be qualified to serve as interpreter in this matter. Most of the hearing was conducted in English, with some translation by Ms. Hernandez when Mr. Berrios indicated that he needed her assistance.

FINDINGS OF FACT

Petitioner resides in Atlantic City, New Jersey. He was married in 1967 to Bonnie Berrios and was divorced from her in 1978 in Ohio. Two of his four daughters, ages 13 and 11 years reside with him during the summer. Petitioner voluntarily supports his children. He was born in Puerto Rico in 1945 and came to the United States in 1962. Petitioner's education in Puerto Rico consisted of completion of primary school through fifth grade. When petitioner first arrived in the United States he went to Florida. He moved to Ohio when he was 18 years old. He had no formal education in the United States until 1969. During that same year, he went to work for Ford Motor Company as a machine operator.

In 1975, petitioner was indicted in the State of Ohio for the following offenses:

1. Knowingly causing or attempting to ". . . cause physical harm to Bonnie Berrios by means of a deadly weapon or dangerous ordinance, to wit: a gun, as defined in Section 2923.11 of the Revised Code" (R-3b).

2. That ". . . by force, threat or deception he removed Bonnie Berrios from the place where she was found or restrained her of her liberty for the purpose of terrorizing, and inflicting serious physical harm on Bonnie Berrios" (R-3c).

3. That he ". . . knowingly carried or had concealed on his person or concealed ready at hand, a deadly weapon or dangerous ordinance, to wit: Loaded Gun" (R-3d).

4. That he ". . . did, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after such attempt or offense upon James Chapman, have a deadly weapon or dangerous ordinance, to wit: a gun, on or about his person or under his control" (R-4b).

5. That he ". . . did knowingly cause or attempt to cause physical harm to James Chapman by means of a deadly weapon or dangerous ordinance, to wit: a gun, as defined in Section 2923.11 of the Revised Code" (R-4c).

The indictments resulted out of incidents occurring during the month of March 1975 while petitioner was still married to Bonnie Berrios. Petitioner alleges the indictments arose at a time when he had marital problems due to his wife dating James Chapman which petitioner found to be offensive and unacceptable. Petitioner, while attempting to prevent his wife from leaving the marriage was charged with kidnapping her from a hamburger restaurant. He also got into an argument with James Chapman (a co-worker) wherein petitioner shot Chapman outside the Ford Motor Company plant and proceeded to take Chapman's car.

Petitioner was ultimately found guilty and sentenced to the following:

1. Aggravated robbery for which he was sentenced to a period of four to twenty-five years (R-4d).

2. Felonious assaut for which he was sentenced to a period of two to fifteen years (R-4d).

3. Carrying a concealed weapon for which he was sentenced to one to ten years (R-3a).

The sentences ran concurrently and most of petitioner's prison term was served at the Chillicothe Correctional Institution (R-4a, R-4d, R-3a).

Petitioner served a total of five years for these convictions, was paroled and was issued a final release from parole on July 16, 1981 (P-2). While in prison petitioner

pursued his education and received his GED (P-1) on November 26, 1979. He was not the subject of any disciplinary action while in prison.

When petitioner was released from parole, he moved to New York and became employed in a plastic factory in New Jersey where he worked for one year. He then relocated to Atlantic City, New Jersey, and went to work for the Claridge Hotel Casino as a dishwasher.

Petitioner has not had any problems with his ex-wife since being released from jail, nor has he been arrested for any other criminal behavior.

On October 22, 1981, petitioner signed a Personal History Disclosure Form-4 (PHD-4) (R-1). Question number 8 states "Have you ever been convicted of a crime or disorderly person's offense in this State or in any other jurisdiction?" Petitioner's answer to that question was "No." The second part of question number 8 requires the applicant to describe the nature of the conviction, the name and address of the government agency involved, and the date of the conviction. Petitioner's response to the second part of that question was "N/A."

On October 27, 1982, petitioner signed a Personal History Disclosure Form-2A (PHD 2A) (P-4). One of the questions on the form asks whether the applicant has ever been named as the defendant or respondent in a law suit, including matrimonial matters. Petitioner's answer to that question was "does not apply" (P-4). Question number 16 on the PHD 2A form (P-4) questions whether the applicant has ever been ". . . arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?" The words "arrest," "offense," and "charge" are defined at the beginning of question number 16. Petitioner's answer to question number 16 was "Yes" and in completing the chart requesting the details of the arrest, he stated that he had been charged or arrested for "fighting with another man," that the matter was disposed of in a "city court," that he was "convicted" in 1975 and that he was sentenced in 1975 (P-4). Question number 15 on the PHD 2A form states "Beginning with secondary (high school) education, provide the information listed below with respect to each school, college, vocational or other employment training program which you have attended. . . ." Petitioner's response to that question was "Does not apply." Question number 14 on the PHD 2A form requests the applicant to provide the names of his employers for the past

ten years, giving the dates of employment. One of the answers provided by the petitioner to that question was that he was employed by the Ford Motor Company in Cleveland, Ohio, from 1969 to 1980. Question number 3 requests the name of "any present spouse." Petitioner's answer to that question was "Bonnie." Question number 2 requires the applicant to state ". . . your current marital status (single, married, judicially separated, divorced). . . ." That question is unanswered. Question number 4 requires the applicant to list all former spouses. Petitioner did not answer that question.

The PHD-4 and PHD 2A forms are written entirely in English. Both forms warn the applicant that failure to answer any question completely and truthfully will result in denial of the license application. Additionally, petitioner's PHD-4 form stated on the signature page that "I understand and read the English language or I have had an interpreter read, explain and record the answer to each and every question on this application form." The signature page provides a line for the interpreter's name and signature, and a line to indicate the language spoken (if not English). Petitioner's PHD-4 form did not provide the name of an interpreter or the language spoken by petitioner.

When petitioner completed his PHD-4 and PHD 2A forms he was assisted by William Castro, a Spanish-speaking friend who has been in the United States since 1978 and with whom petitioner resided from 1981 to 1983. He received his high school diploma in Puerto Rico. He has been employed in the casino industry for four and one-half years, and is presently employed as a utility porter. He possesses a casino hotel employee registration. Mr. Castro and petitioner always converse with each other in Spanish. When questioned as to how he came to assist petitioner in completing his applications he stated:

> Well, like I told him, I could read the English if I was reading it to myself. I could understand the words. Like him, I couldn't say straight the way he wanted in Spanish, because I couldn't translate too good in Spanish. If I was reading it to me, in English, I understand and I write it; but translating back in Spanish is difficult, because the words don't sound the same. You can't put them the same way they go in English. That is where I got problem.

Specifically, Mr. Castro read the questions on the application forms to petitioner, told him to the best of his knowledge what the question meant, whereupon petitioner wrote down the answers to the questions. Mr. Castro did specifically tell petitioner what answers he should write down for many of the questions. When questioned what the word

"jurisdiction" means, Mr. Castro stated that his understanding is that the word "jurisdiction" applied to New Jersey. Specifically, concerning question number 8 on the PHD-4 form, Mr. Castro told him that the question applied to ". . . problems in Atlantic City or New Jersey, that's all." With regard to question 16 on the PHD 2A form, Mr. Castro told petitioner what answer to write on the application form.

Mr. Castro stated that in completing any application form, there might be occasions when he would write down an answer that was not the complete truth if he felt that the information being sought was not "really important." When Mr. Castro assisted petitioner in completing both forms, he read the question in English and then tried to tell petitioner in Spanish what the question meant. When questioned whether Mr. Castro asked petitioner if he had ever been in trouble with the law, Mr. Castro stated:

> I really didn't say law, I told him, when I read the question — I said have you ever been fighting or stuff like that and he said yeah, I was fighting once and I said to just put no then or just put whatever . . . I never really knew he got in trouble with the law. Since I have been knowing him for about two years, I didn't think he got in trouble with the law. . . . That the only trouble he had was fighting with men. So that is what I told him to write down.

Mr. Castro wanted to help petitioner obtain a job in the casino industry and stated that he felt that by answering "No" to a question involving petitioner's criminal background, that it would be easier for him to obtain employment. Mr. Castro did not know at the time he assisted petitioner in completing the PHD-4 form that petitioner had been convicted of a crime or that he had been imprisoned.

Mr. Castro offered minimal assistance to petitioner with regard to the question on the PHD 2A form concerning petitioner's prior employment stating "I wasn't looking at what he was doing. Once I explained this part to him, I went to do something else. I say all you have to do here is your last job, until now."

Mr. Castro read petitioner the language on the PHD 2A form which applied to interpreters, and stated that he did not sign the form as petitioner's interpreter because he felt that any potential employers reading the form would feel that petitioner ". . . doesn't know English at all. If he need an interpreter, he could need an interpreter to the job, too. . . ." Mr. Castro felt that petitioner knew enough English to survive a simple job interview. Petitioner had requested that Mr. Castro assist him in completing his

application forms because Mr. Castro's ". . . English is better than mine. He can read and write better."

Alexander Love has been employed as a Division of Gaming Enforcement Agent for three years. He previously was employed by the Washington, D.C., and Wildwood Police Departments, and the Camden County Sheriff's Department. Agent Love was assigned to conduct the investigation of petitioner's PHD 2A application. He held a telephone interview with petitioner on November 28, 1983. He perceived that petitioner had an accent and told him at the beginning of the interview that he had access to a bilingual interpreter who could help conduct the interview. Petitioner stated that an interpreter was not necessary, that he understood English well. Agent Love told petitioner that he wanted to update his application and asked petitioner if there was anything he desired to add to the form or if there was anything he neglected to include on the application. Petitioner stated that he was now divorced and he had obtained another car.

Agent Love read petitioner question number 16 and petitioner stated that he had only one arrest "for fighting with another man" which he had reported on the form. Agent Love asked petitioner to describe the fighting incident and petitioner gave an explanation which did not mention the shooting of James Chapman. Agent Love then asked petitioner if a man was shot during this incident, and petitioner replied "yes." Petitioner did not volunteer any information concerning the kidnapping arrest. Agent Love confronted petitioner with the information he had from the arrest reports, and petitioner stated that he had a problem with his wife in that he wanted to prevent her from leaving the marriage. He stated that petitioner said he did not disclose this incident on his PHD 2A form because it was ". . . only a marital problem. She had dropped the charges and he had only spent one day in jail on that charge and he did not think it was important to disclose it on the application." Petitioner did not voluntarily disclose that he had spent five years in prison but admitted the prison term when Agent Love questioned him about it.

Agent Love stated that while petitioner's English was not fluent, he spoke English well enough that Agent Love felt he understood what the petitioner was saying.

Petitioner presently holds a casino employee registration and is employed by the Claridge Hotel Casino as a maintenance man. He does not really understand the difference between a casino license and registration.

Emil Newmann has been employed by the Claridge Hotel Casino for three and one half years. He is the chief engineer in charge of all maintenance and environmental services. He supervises 120 employees, including petitioner whom he has known for approximately three years. Mr. Newmann has had contact with petitioner for approximately three years, at least once or twice per week. Mr. Newmann described petitioner as an ". . . outstanding employee. He is always anxious to take any overtime that can be given. He is always on time. He is neat and he is very pleasant." Mr. Newmann has never had any disciplinary problems with petitioner. When asked if there were any communication problems between him and petitioner, Mr. Newmann stated the following:

> What you would actually have to do with Hector and also a number of the employees which we do have, you can't call them up over the phone and give them the assignment. You actually have to walk down. If there is a change to their assignment, you walk them through it, so they do understand fully, because a lot of times you will assume, speaking to them, they do understand you and then you go back and find the job wasn't completed the way you needed it to be done.

Mr. Newmann was not specifically aware of the details of petitioner's conviction, but he did know that petitioner had been involved in ". . . a fight with another gentleman."

John J. Lynch, Jr. is employed as a shift supervisor at the Claridge Casino Hotel where he has been employed for three and one-half years. He supervises nine people, and has had petitioner under his supervision. He described petitioner as an excellent employee who was always on time, and who never presented any problems. He found petitioner to be extremely cooperative and trustworthy, specifically describing petitioner's work in the Grease Recovery Unit where petitioner was exposed to thousands of dollars worth of equipment which could easily have been taken. However, Mr. Lynch stated that he never found anything missing or broken when petitioner was working in that unit.

Joseph Chauncy has been employed at the Claridge Hotel Casino as the Lead Mechanic in Facilities for three and one half years. Petitioner is presently under

Mr. Chauncy's supervision on a daily basis. He described petitioner as being an excellent employee, who does what he is told, and presents no problems. He has given petitioner the keys to his personal locker without any problem. He has never observed petitioner to be insubordinate or commit any kinds of infractions. Mr. Chauncy knew that petitioner had had some problems in securing a license, but did not know the details of his criminal background until the hearing. Mr. Chauncy specifically stated that when he heard for the first time at this hearing about petitioner's criminal convictions his opinion of petitioner as an employee remained the same.

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86b provides that an individual may be disqualified from licensure or registration for failure to provide "...information, documentation and assurances required by the Act or requested by the Commission, or failure of the applicant to reveal any facts material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria." The Division alleges that petitioner's registration should be revoked and his application for licensure should be denied due to failure to adequately and fully disclose his convictions and kidnapping charges, and for providing misleading information as to his employment history.

The testimony is undisputed that Spanish is the native language of both petitioner and Mr. Castro who assisted him in completing the two PHD forms. It is also apparent that at the time Mr. Castro assisted petitioner in completing both forms, he had some employment experience in the casino industry and was somewhat familiar with the application process. I am convinced that petitioner relied upon Mr. Castro's advice and experience, and further, that Mr. Castro was more adept at the English language than petitioner. However, his understanding of the meaning of the word "jurisdiction" and his explanation of the difficulty he had in translating English into Spanish, leaves a serious question as to the accuracy of his translation and explanation of the questions. It is difficult to believe that had Mr. Castro interpreted accurately for petitioner, petitioner would not have reported on the form that he had received a high school equivalency diploma, i.e., information which would have clearly been to petitioner's advantage to submit to the Commission. Furthermore, had petitioner had a reliable translation of the questions, there would have been no reason for him to not accurately report his marital status. If the PHD forms were written in both Spanish and English, or at the very least,

contained a warning in the Spanish language of the importance of truthfully answering all questions on the form, there would be little room for doubt that Spanish-speaking applicants are forewarned of their responsibility to accurately answer all questions on the form. The statement contained on the signature page of the PHD-4 form stating that an applicant who speaks little or no English has had an interpreter read and explain and record the answer to each and every question on the application form (which statement is written in English), is virtually meaningless if the applicant's interpreter is not adept at the English language. Considering petitioner's strong reliance upon Mr. Castro (who I perceived was not particularly adept at translating from English to Spanish), considering that petitioner omitted information which would have been beneficial, and taking into account the fact that petitioner did report on his PHD 2A form that he had been convicted of a crime in 1975 for which he was sentenced, I cannot **CONCLUDE** that petitioner deliberately and knowingly omitted or attempted to mislead the Division or Commission in the completion of his application forms.

When questioned by Agent Love as to whether or not he had shot a man, and whether he had been arrested as a result of an incident with his wife, petitioner answered both of those questions affirmatively. The Division argued that petitioner deliberately used his language deficiency as a means to mislead and omit information during he application process. However, based upon the factual findings, I cannot agree with that argument. Petitioner's English language ability at the time of the hearing was reasonably good. However, the issue is not what his ability was at the time of the hearing, but rather, what difficulties he may have had with the English language at the time that he completed the applications. I am convinced that petitioner had sufficient English language deficiency requiring him to seek the assistance of Mr. Castro, but that Mr. Castro also left much to be desired with regard to the advice that he gave to petitioner during the application process, and also with regard to the translations that he provided to petitioner. I, therefore, **CONCLUDE** that petitioner has not violated N.J.S.A. 5:12-86b. This conclusion applies to the PHD4 and PHD 2A forms.

The Division seeks to disqualify petitioner from licensure and registration alleging that he was convicted of a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86c which provides that a person shall be disqualified from licensure or registration (absent a showing of rehabilitation), for a conviction of any offense in any jurisdiction which would be equivalent to certain statutory disqualifying offenses under New Jersey's criminal code at the time of application. Section 86c of the Casino Control Act lists

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numerous New Jersey criminal statutes which constitute statutory disqualifying offenses. However, while the Division asserted that petitioner was convicted of a statutory disqualifying offense which occurred in the State of Ohio, no evidence whatsoever was presented to demonstrate that in fact the Ohio convictions were equivalent to section 86c statutory disqualifying offenses. There was no argument or testimony presented as to the elements of the offenses for which petitioner was convicted in Ohio, as compared to the sections of the New Jersey criminal code for which the Division alleges the Ohio convictions are equivalent. A boldface assertion that an out-of-state conviction is equivalent to a New Jersey statutory disqualifying offense, is insufficient to demonstrate equivalency. The title of the offense, i.e., robbery or assault does not mean that the offenses are necessarily equivalent. Evidence must be presented of the elements of the offenses in both jurisidictions at the time of conviction to determine whether or not in fact the offenses are equivalent. No such evidence was presented in this case. Therefore, I do not **CONCLUDE** that any of petitioner's Ohio convictions are statutory disqualifying offenses.

However, assuming arguendo, that petitioner was convicted of a statutory disqualifying offense, I **CONCLUDE** that he has rehabilitated himself.

N.J.S.A. 5:12-90h and 5:12-91d provide the criteria for determining rehabilitation with regard to licensure and registration, and the criteria to be considered for licensure and registration are identical. While it is unquestionable that petitioner's convictions for robbery and felonious assault are serious offenses (based upon the sentences he received), there are numerous mitigating factors to be considered. Specifically, these offenses occurred nine years ago as the result of an incident wherein petitioner's emotions flared upon his discovery that his wife was dating another man. Petitioner has had no further problems with his ex-wife nor has he had any criminal problems since the 1975 convictions. He was apparently a good prisoner, and was motivated enough to pursue his high school degree while in prison. He has maintained consistent employment since being released from jail, has demonstrated responsibility toward his children, and further, he has demonstrated himself to be a trustworthy, capable and honest employee in the casino industry, as was borne out by the testimony of his three character witnesses, as well as reference letters submitted at the time of hearing (P-5, P-6). With the passage of time, respondent has demonstrated himself to be a responsible individual who has remained free of any criminal behavior. He has clearly rehabilitated himself. To deny his licensure and revoke his registration on the basis of his 1975

convictions would result in an unnecessary punishment and would remove from the casino industry a responsible and trustworthy worker.

I further **CONCLUDE** that the evidence which I have considered with regard to petitioner's rehabilitation, including the testimony of his three supervisors, as well as the two reference letters, unquestionably demonstrates by clear and convincing evidence petitioner's reputation for good character, honesty and integrity. The testimony of his character witnesses (as well as the reference letters), was undisputed by the Division.

Finally, the Division alleges that respondent's convictions are inimical to the policy of the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4). I disagree. Petitioner's convictions which occurred some nine years ago, without further criminal incident are remote and far removed from petitioner's present casino employment as a maintenance worker. The nine-year-old convictions will not in any way be detrimental to casino operations, or undermine the public confidence in the casino gaming industry. There is nothing in the record to suggest that petitioner will engage in antisocial or criminal behavior which will affect his employment or the casino industry.

ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner shall be issued a casino employee license and that the Division's request to revoke petitioner's casino employee registration is hereby **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 1, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

November 2, 1984
DATE

Bernadette T. Fazzio
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 07 1984
DATE

Ronald L. Parker/pm
OFFICE OF ADMINISTRATIVE LAW

ml

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1	Official report of test results of General Educational Development, dated November 26, 1979
P-2	Final release and restoration, Adult Parole Authority, Columbus, Ohio, dated July 16, 1981
P-3	Page two of petitioner's Personal History Disclosure Form 4
P-4	Petitioner's Personal History Disclosure Form 2A
P-5	Letter from Walter Keene, dated May 25, 1984
P-6	Letter from Joseph Flood, dated May 24, 1984
R-1	Petitioner's Personal History Disclosure Form - No. 4
R-2	Petitioner's Personal History Disclosure Form - 2A
R-3a, b, c, d	Records from the court of Common Pleas, Cuyahoga County, State of Ohio, In the Matter of State of Ohio v. Hector Berrios
R-4a, b, c, d	Records from the Court of Common Pleas, Cuyahoga County, State of Ohio, In the Matter of State of Ohio v. Hector Berrios

LIST OF WITNESSES

FOR PETITIONER:

Hector Berrios
Emil Newmann
John J. Lynch, Jr.
Joseph Chauncy
William Castro

FOR RESPONDENT:

Alexander Love

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-128
OAL DOCKET NO. CCC 10968-82
REGISTRATION NO. 41695-40

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

MICHAEL BISCIOTTI,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 5, 1983, recommending that the respondent's casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings having resolved at its public meeting of January 25, 1984, to modify the said Initial Decision and to revoke the respondent's registration,

IT IS on this 16th day of JANUARY 1985 ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

1. While the Commission agrees with the Administrative Law Judge's (ALJ) conclusion "...that the Division has established reasonable grounds for the revocation of the respondent's casino hotel employee license [sic - registration] on the basis of the statutory disqualifiers", she erred in her determination that "[t]he burden of proof, therefore, was on the respondent to show that his continued [registration] would not be inimical to the policies of the Casino Control Act. Further, the ALJ's conclusion "...that the respondent has not established by a preponderance of reliable and credible evidence that his continued [registration] would not be inimicable [sic - inimical] to the policies of the Casino Control Act" is rejected.

   The burden of proof in a revocation proceeding is on the Division of Gaming Enforcement to show that an offense or offenses render the respondent's registration inimical to the policies of the Casino Control Act and casino operations.

   The Commission also finds that in light of the respondent's other disqualifying conviction, namely a 1981 conviction for theft in the third degree contrary to N.J.S.A. 2C:20-3, it is unnecessary to resolve the inimical issue.

2. The ALJ erred in her determination that the respondent's conviction on June 11, 1981, for burglary in the third degree contrary to N.J.S.A. 2C:18-2, is a statutory disqualifying offense. Pursuant to N.J.S.A. 5:12-86(c)(1), burglary constitutes a statutory disqualifying offense only if it is a crime of the second degree. Therefore, the respondent's conviction for third degree burglary is not a disqualifying offense.

IT IS FURTHER ORDERED that the casino hotel employee registration issued to Michael Bisciotti be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Michael Bisciotti is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Michael Bisciotti, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 10968-82

AGENCY DKT. NO. 82-128

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW & PUBLIC SAFETY,

Petitioner

v.

MICHAEL BISCIOTTI,

Respondent.

APPEARANCES:

Lee D. Gottesman, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Michael Bisciotti, respondent, Pro Se

Record Closed: October 21, 1983 Decided: December 2, 1983

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint filed by the New Jersey Division of Gaming Enforcement (hereinafter referred to as the "Division") with the Casino Control Commission on September 13, 1982, seeking the revocation of the license of respondent as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Bisciotti requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held on February 28, 1983, and at that time the parties agreed that the issues in this matter are:

(1) Whether the alleged criminal record of the respondent disqualifies him from continued licensure.

(2) Whether the conduct of the respondent underlying the alleged convictions would render continued licensure inimical pursuant to the policies set forth in the Casino Control Act.

(3) Whether the respondent can establish that he has been rehabilitated.

The hearing took place on August 11, 1983, and the record was kept open until October 21, 1983, in order to give Mr. Bisciotti the opportunity to obtain an affidavit from his supervisor at the Tropicana Hotel-Casino in Atlantic City (hereinafter referred to as "Tropicana") and for Mr. Gottesman to file the court's determination on the May 28, 1983 complaint filed against the respondent.

I **FIND** that the undisputed facts pertinent to this matter are:

(1) On February 11, 1981, Michael Bisciotti was indicted on the charges of committing both burglary in the third degree, a violation of N.J.S.A. 2C:18-2 and the theft of property with a value in excess of $500, a violation of N.J.S.A. 2C:20-3 on May 30, 1980 (P-1).

(2) On February 25, 1981, Michael Bisciotti was indicted on the charges of committing both burglary in the third degree, a violation of N.J.S.A. 2C:18-2 and the theft of property with a value in excess of $1,110, a violation of N.J.S.A. 2C:20-3 on July 8, 1980 (P-2).

(3) On May 31, 1980, Mr. Bisciotti was arrested in Philadelphia for receiving stolen property and conspiracy, and on August 21, 1980, he was arrested in Philadelphia and charged with robbery, burglary, conspiracy, theft, receiving stolen property, threats to kill and simple assault (T33).

(4) On March 1, 1981, Mr. Bisciotti was arrested in Marlton, New Jersey, for the possession of a controlled dangerous weapon (T34).

(5) On May 4, 1981, Mr. Bisciotti entered a plea of guilty as to both charges in the February 11, 1981 indictment and a plea of guilty as to the theft charge contained in the February 25, 1981 indictment. The burglary charge contained in the February 25, 1981 indictment was dismissed. On June 11, 1981, Mr. Bisciotti was placed on probation for a period of two years and was assessed a penalty of $75 (P-1, P-2).

(6) At the time of the above-mentioned criminal activities in 1980, Mr. Bisciotti was 18 years old, had been released from the Marine Corps, was taking speed and PCP, and his mother and stepfather were in the process of getting a divorce (T19, 21, 42).

(7) Mr. Bisciotti has now completed the two-year probation period (T16-7).

(8) On May 29, 1982, Mr. Bisciotti got a job with Tropicana as a bar porter and was issued a casino hotel employee license (T13-14). At the time of the hearing, Mr. Bisciotti was still employed by Tropicana.

(9) The respondent did not list his Marine Corps service as prior employment on his casino license application (T27).

(10) According to the Tropicana personnel records, Mr. Bisciotti has had ten unexcused absences and was late six times (T30, 48). Also according to these records, Mr. Bisciotti had a leave of absence in January 1983 for a hand injury and at the time of the hearing he was on a leave of absence because of a head injury (T49-50).

(11) In April 1983, Michael Bisciotti was charged with assault, a violation of N.J.S.A. 2C:12-1(a)(1), based on complaints signed by John Brennan and James McGuigan (P-3). Both Mr. Brennan and Mr. McGuigan alleged that the respondent attempted to strike them with his automobile (P-4 and P-5).

(12) Mr. Bisciotti failed to appear for the hearing on the April 1983 assault charges at the Gloucester Township Municipal Court. On May 2, 1982, Judge Vincent Lazzaro issued a bench warrant for Mr. Bisciotti's arrest and the warrant was later dismissed upon the petition of Mr. Bisciotti's attorney (P-6, T43).

(13) On May 28, 1983, a complaint was filed against Mr. Bisciotti for burglary, a violation of N.J.S.A. 2C:18A-2, and the theft of property, a violation of N.J.S.A. 2C:20-3 (P-7, P-8 and P-9). Thereafter, these charges were reduced to criminal trespass, a violation of N.J.S.A. 2c:18-3a and the theft of property with a value of less than $200, a violation of N.J.S.A. 2C:20-3 (P-9).

(14) As to the May 28, 1983 complaint as modified, Mr. Bisciotti entered a plea of guilty to the theft of property with a value of less than $200, and was placed on probation for one year and was fined $100 plus court costs (P-11).

On his own behalf, Mr. Bisciotti stated that when he left the Marine Corps in 1980, he was mixed up and was taking drugs, and that he is now straightened out and has a good job with Tropicana. The respondent stated that the Division has discriminated against him by filing the complaint since other people employed by Tropicana have worse criminal records (T15).

Mr. Bisciotti stated that the February 11, 1981 indictment involved his taking a minibike for a joy ride (T32). The respondent did not list his Marine Corps service as employment on his casino license application since he was discharged after less than 180 days of service and had not been considered to be officially a member of the Marine Corps since he did not complete this training period. The respondent received a salary for the period of time he was in the Marine Corps.

As to the 1983 assault charge, Mr. Bisciotti stated that he and his brother were having an argument in a Pizza Hut regarding who should pay for a pizza when Mr. Brennan and Mr. McGuigan came into the Pizza Hut and joined in the argument. When Mr. Bisciotti left, Mr. Brennan and Mr. McGuigan followed him out. The respondent stated that he was hit on the face by one of these men (T21, 36). Mr. Bisciotti got into his

car, and one of the men tried to stop him by getting in front of the car and the respondent drove around this person (T36). When the police arrived, Mr. Brennan and Mr. McGuigan claimed that Mr. Bisciotti tried to run them down with his car (T36). Mr. Bisciotti was taken to police headquarters and alleged that the police would not listen to his version of what had occurred, nor would they allow him to file complaints against Mr. Brennan and Mr. McGuigan (T36-37).

Mr. Bisciotti stated that he was not in court on the day scheduled for trial on the 1983 assault charges since he had no way to get to the courthouse (T37-38).

As to the 1983 trespass-theft charges, Mr. Bisciotti stated that he and Ed Sutley were drinking and playing pool at Gibbon's Bar for approximately six hours (T39). When they went out into the backyard of the bar to urinate, they saw boxes and bottles of liquor and they took approximately ten bottles of liquor and a bag containing about $40 in change (T40-2). The respondent and Mr. Sutley planned to continue their party at home and used part of the change to pay for a taxi ride and to purchase a pizza (T40). When the police arrived at Mr. Bisciotti's home, the respondent gave the police officer the remaining amount of change, approximately $29 (T40). Mr. Bisciotti described the incident as a "juvenile prank at an older age" (T23, line 15-6).

As to the unauthorized absences noted on the Tropicana personnel records, Mr. Bisciotti stated that he called in sick on these days and that the hotel management had refused to accept his doctor's excuses (T55). Mr. Bisciotti had no specific recollection regarding the six incidents of tardiness.

Mr. Bisciotti stated that he requested the first leave of absence noted on the Tropicana personnel record because of a hand injury; however, while on leave, he sustained a concussion when he "was jumped" in Philadelphia and that because of both injuries, he was out for approximately six weeks (T29, 44, 55-6). As to the leave of absence he was on at the time of the hearing, Mr. Bisciotti stated that he was on a leave because he broke his collarbone when he fell off his bike and he could not explain why the Tropicana officials told the Division's investigator that he had a skull fracture (T56).

Based on the testimony, I **FIND** that the additional pertinent facts are:

(1) Mr. Bisciotti has been employed by Tropicana for approximately one and one-half years. Although his employment record shows a number of absenteeisms and tardinesses, the Tropicana management has not fired the respondent or taken any disciplinary action based on his attendance record, and his immediate supervisor, Mr. McNultey, considers the respondent to be a good employee.

(2) There was no persuasive evidence introduced to show that the respondent had misrepresented the nature of his injuries in order to obtain the two medical leaves of absence from Tropicana.

(3) Mr. Bisciotti's failure to list his Marine Corps Service as employment on his casino license application was not an intentional misstatement.

In closing, Mr. Gottesman argued that the respondent's 1981 convictions for burglary and theft were statutory disqualifiers, pursuant to N.J.S.A. 5:12-86c, and that Mr. Bisciotti has not shown that he has been rehabilitated, pursuant to to the provisions of N.J.S.A. 5:12-91d, or that his continued licensure would not be inimical to the policies set forth in the Casino Control Act, in N.J.S.A. 5:12-86c(4).

There is no question that Mr. Bisciotti's 1981 burglary and theft convictions are automatic disqualifers, pursuant to N.J.S.A. 5:12-86(c), and I **CONCLUDE** that the Division has established reasonable grounds for the revocation of the respondent's casino hotel license on the basis of the statutory disqualifiers.

The burden of proof, therefore, was on the respondent to show that he has been rehabilitated and that his continued licensure would not be inimical to the policies set forth in the Casino Control Act.

The Casino Control Act sets forth the following eight criteria to be used in determining whether a person has affirmatively demonstrated his/her rehabilitation:

(1) The nature and duties of the registrant's position applied;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling of psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have the registrant under their supervision. [N.J.S.A. 5:12-91d]

In this matter, Mr. Bisciotti has made a partial affirmative showing as to rehabilitation. The crimes which gave rise to the statutory disqualification took place when he was 18 years old, and at a time when he was taking drugs and experiencing family difficulties because of a divorce proceeding. Additionally, Mr. Bisciotti has successfully completed his period of probation and has been gainfully employed by Tropicana for one and one-half years as a bar porter.

However, I cannot ignore the fact that the criminal action resulting in the disqualification took place only three years ago and that Mr. Bisciotti has been recently convicted of another theft charge which, although it is not a statutory disqualifier, cannot be dismissed as a prank as argued by Mr. Bisciotti. Therefore, I **CONCLUDE** that Mr. Bisciotti has not established by clear and convincing evidence his rehabilitation, pursuant to the provisions of N.J.S.A. 5:12-91d.

Also based on the facts, I **CONCLUDE** that the respondent has not established by a preponderance of reliable and credible evidence that his continued license would not be inimicable to the policies of the Casino Control Act.

Therefore, I **ORDER** that the casino employee license of Michael Bisciotti be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in

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this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 2, 1983
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

December 5, 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Dec. 7, 1983
DATE

Ronald L. Lauckenfeld
OFFICE OF ADMINISTRATIVE LAW

ml/EE

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APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 A certified copy of the February 11, 1981 indictment and the June 11, 1981 judgment of conviction in the matter of State v. Michael Bisciotti

P-2 A certified copy of the February 25, 1981 indictment and the June 11, 1981 judgment of conviction in the matter of State v. Michael Bisciotti

P-3 Report regarding the arrest of Michael Bisciotti on April 3, 1983

P-4 A copy of the complaint filed against Michael Bisciotti on April 4, 1983, by James McGuigan

P-5 A copy of the complaint filed against Michael Bisciotti on April 4, 1983, by John Brennan

P-6 Bench warrant issued by Judge Vincent Lazzaro, Gloucester Township Municipal Court, on May 2, 1982 (should be 1983)

P-7 Investigation Report as to a burglary-theft incident, dated May 28, 1983

P-8 Supplementary Investigation Report regarding a burglary-theft incident, dated June 2, 1983

P-9 Complaint filed against Michael Bisciotti by John Gibbons on May 28, 1983

P-10 Marked for idenification only

P-11 Certified copy of the complaint and the court action on October 13, 1983, in State v. Michael Bisciotti (received by mail on October 21, 1983)

FOR THE RESPONDENT:

R-1 Affidavit of Thomas McNulty (received by mail on August 31, 1983)

WITNESSES

FOR THE PETITIONER:

Detective John Dickerson

FOR THE RESPONDENT:

Michael Bisciotti

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-70
OAL DOCKET NO. CCC 6829-83

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission, upon the filing of an Initial Decision by the Office of Administrative Law on November 20, 1984, finding that Boardwalk Regency Corp.'s Dream Machine advertisements and promotional campaign violated the Casino Control Act and attending regulations by providing information about odds and by being misleading, and finding no violation regarding the allegations in the complaint pertaining to offering alcoholic beverages and to barking; and the ALJ having recommended a civil penalty totaling $30,000; and Boardwalk Regency Corp. having filed exceptions to the Initial Decision, specifically objecting to that portion of the decision finding the promotional campaign to be misleading, and arguing that the recommended penalty was excessive, and the Division of Gaming Enforcement, having filed exceptions to the Initial Decision, objecting to the finding that no barking had occurred and asserting that the penalty should be increased; and the Commission having considered the

entire record of these proceedings; and the Commission having resolved at its public meeting of January 16, 1985, to affirm and adopt the Initial Decision insofar as it found violations for advertising information about odds and misleading advertising and found no violation regarding barking, and to modify the Initial Decision to find a violation concerning the offer of alcoholic beverages; and the Commission having further resolved to modify the Initial Decision to make an additional finding of fact that there existed other dollar slot machines in Atlantic City which exceeded the payout percentage of Boardwalk Regency Corp.'s Dream Machine; and the Commission having further resolved to impose a civil monetary penalty as follows: (1) for advertising information about odds - $40,000, (2) for misleading advertising - $30,000, and (3) for offering alcoholic beverages - $5,000 - for a total of $75,000,

IT IS on this 26th day of April, 1985, ORDERED that the Initial Decision of the ALJ is affirmed and adopted insofar as it found violations for advertising information about odds and misleading advertising and found no violation regarding barking.

IT IS FURTHER ORDERED that the Initial Decision is modified to find a violation concerning the offer of alcoholic beverages.

IT IS FURTHER ORDERED that the Initial Decision is modified to make an additional finding of fact that there existed other dollar slot machines in Atlantic City which

exceeded the payout percentage of Boardwalk Regency Corp.'s Dream Machines.

IT IS FURTHER ORDERED that a civil penalty be imposed totaling $75,000.

IT IS FURTHER ORDERED that copies of this final order be served upon Boardwalk Regency Corp. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
Walter N. Read, Chairman

By _____
Dennis Daly
Senior Assistant Counsel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-70

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

BOARDWALK REGENCY CORPORATION, :

Respondent. :

:

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chairman
E. Kenneth Burdge, Vice Chairman
Joel R. Jacobson, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For the Division of Gaming Enforcement:

Katherine A. Smith, Deputy Attorney General

For Boardwalk Regency Corporation:

J. Michael Nolan, Jr., Esq.,
Pitney, Hardin, Kipp & Szuch

For the Casino Control Commission:

Dennis Daly, Senior Assistant Counsel
Steven M. Ingis, Assistant Counsel

PROCEDURAL HISTORY

This matter arises from a complaint of the Division of Gaming Enforcement (DGE) against Boardwalk Regency Corporation (BRC) filed with the Commission on March 21, 1983, wherein it is alleged that BRC violated various provisions of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.,[1] and attending regulations with regard to its advertising and promotional campaign concerning a one dollar slot machine known as the Dream Machine. More specifically, BRC is charged with the following: (1) providing information concerning gambling odds in its advertisements, in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b); (2) advertising in a misleading and deceptive manner, in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.2(e); (3) offering alcoholic beverages to the public by way of its advertisements, in violation of N.J.S.A. 5:12-103(g)(1); and (4) using a barker to induce people to gamble, in violation of N.J.S.A. 5:12-100(1).[2]

On March 16, 1983, the DGE petitioned the Commission for a cease and desist order against BRC, enjoining BRC's ongoing advertising campaign for its Dream Machines. Pursuant to

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1. Throughout this opinion, provisions of the Act may be cited by section number only. The complete citation may be obtained by adding the prefix "N.J.S.A. 5:12- ."

2. The fourth allegation was added by amended complaint filed on October 24, 1983.

N.J.S.A. 5:12-109(a)(3), the Commission issued the cease and desist order on March 17, 1983 (Exhibit J-11). Thereafter, the DGE filed the within Complaint.

A prehearing conference was held on August 11, 1983, before Commissioner Joel R. Jacobson. Subsequently, on August 26, 1983, the Commission transmitted the case to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A second prehearing conference was conducted on October 24, 1983, before an Administrative Law Judge (ALJ). On that date, the ALJ granted the DGE's motion to amend its complaint to charge a violation of section 100(1) of the Act. Hearing dates were initially scheduled in January; following several adjournments, the hearing commenced on April 16, 1984.

Prior to the hearing, the parties had entered into a stipulation of facts, accompanied by nine exhibits (Exhibit J-1A through I).

On April 19, 1984, the DGE made a motion to supplement the evidentiary record with certain documents, known as slot movement logs, from the Tropicana Hotel and Casino and Harrah's Marina Hotel and Casino. On May 25, 1984, the ALJ heard oral argument on the motion by means of a telephone conference. On June 20, 1984, the ALJ ruled that there was a lack of authentication and an inadequate foundation to allow the admission of these documents. However, the judge further ordered that the DGE would be permitted to attempt to supplement

the record at an additional hearing, pursuant to N.J.A.C. 1:1-15.2(a), (b) and (d) and N.J.A.C. 1:1-16.1.

On July 20, 1984, the additional evidentiary proceeding was conducted at which time the DGE attempted to supplement the evidentiary record with the aforementioned slot movement logs. The ALJ denied the DGE's motion.

On November 5, 1984, the ALJ issued an initial decision,[3] concluding that BRC's Dream Machine advertisements and promotional campaign provided information about odds and were misleading. He further ruled that the DGE had failed to establish that BRC's advertising and promotional campaign impermissibly made an offer of alcoholic beverages or that barking had occurred. The judge recommended the imposition of a civil monetary penalty for the two violations in the amount of $30,000.

BRC filed exceptions to the initial decision, specifically objecting to that portion of the decision finding the promotional campaign to be misleading. In addition, BRC argued that the recommended fine was excessive. The DGE also filed exceptions, objecting to the finding that section 100(1) of the Act (barking) was not violated, and asserting that the penalty should be increased.

FACTS

Prior to the Commencement of the hearing, the parties

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3. For convenient reference, the initial decision is appended hereto as A1 through A15.

agreed to a stipulation of facts. (J-1A to I). Based on the stipulation, the ALJ made certain findings of fact which we hereby adopt. Nevertheless, in the interest of clarity, we will briefly recount the essential facts of this case. We will also address the factual findings made during the evidentiary hearing and modify the initial decision in certain particulars as hereafter noted.

On or about December 12, 1982, BRC placed a "tease" advertisement in the Atlantic City Press which stated that "the Dream Machines are coming to Caesars." Similar advertisements appeared subsequently in the Atlantic City Press and Atlantic City Magazine. On or about February 24, 1983, BRC commenced a multi-media advertising campaign to promote its Dream Machines. Thereafter, on or about March 1, 1983, advertisments placed by BRC promoting the Dream Machines appeared in approximately 25 newspapers and three magazines as well as on numerous billboards and transit vehicles.

The advertisements which appeared in the newspapers and magazines used advertising slogans such as "win more, play longer, at the most exciting one dollar slots in Atlantic City history"; "the most beautiful odds in town"; "the best odds"; and "as a Caesars one dollar slot player, we'll make sure you always have drinks and change."

In conjunction with the advertising campaign, BRC issued a press release on March 9, 1983, in which it stated that the

Dream Machines "offer the best odds in Atlantic City's history" and that the "Dream Machines' true odds are 95% return, while our nearest competitors' odds on dollar slots, in January, were only an 89% return." As the ALJ found, the Dream Machine's payment percentage was 95%. The payout percentage for all of BRC's dollar slot machines in January 1983 was an average of 87.3%. The best average return for a competitor of BRC on all of its dollar slots in January 1983 was an average payout of 89%.

BRC also mailed a promotional brochure about the Dream Machine to approximately 39,000 casino patrons. These brochures provided the same information contained in the newspaper and magazine advertisements, to the effect that the Dream Machines offered the best and "most beautiful odds" in Atlantic City. In addition, BRC distributed buttons and cards to its casino floor personnel. The buttons stated, "ask me about Dream Machines." The cards contained printed information about the Dream Machine, including the statement that, "Dream Machines have the highest return percentage to one dollar slot plays in Atlantic City: 95% versus an average of no more than 89% at any other casino in town." The cards also contained the instruction that casino personnel will make sure that patrons, "will always have plenty of drinks and change."

As of March 1, 1983, there were approximately 100 Dream Machines in operation at BRC. On November 4, 1983, there were 158 such machines.

On March 17, 1983, the Commission issued a cease and desist order requiring BRC to stop the advertisements concerning the Dream Machine, as well as the buttons and cards which were distributed to casino personnel. BRC complied with this order.

The above findings of fact were derived from the parties' stipulation of facts. The following factual findings are drawn from the testimony presented at the administrative hearing. In this regard, we adopt the ALJ's findings of fact with respect to the testimony of Louise Patterson, an Atlantic City resident who patronizes the casinos once or twice a month. Ms. Patterson went to Caesar's on March 24, 1983, in response to an advertisement she had seen in Philadelphia Magazine extolling the virtues of the Dream Machine, including the claim of the best odds in Atlantic City and the opportunity to play longer and win more. She played the machine and, after winning nothing with her $10, asked a security guard for a drink. She was told that the casino had just opened and that no drinks were available.

Bruce R. Lampa, an expert in the field of slot machine operation, who is in charge of the DGE's Slot Machine Unit, testified concerning monthly Electronic Data Processing (EDP) reports which show the percentage payout for each slot machine at the licensed casinos in Atlantic City. Lampa stated that the EDP reports revealed that Harrah's Marina Hotel and Casino had six one dollar slot machines in December 1982 and March 1983 which had a payout percentage greater than 95% and that the Tropicana had seven one dollar slot machines in October 1982 and

March 1983 which had a payout percentage greater than 95%. The ALJ excluded Lampa's testimony and denied the admission of the EDP reports on the ground that this evidence was irrelevant because it did not specifically pertain to the month of January 1983.

Upon careful reflection, we find this evidentiary ruling to be erroneous and therefore modify the initial decision accordingly. We perceive no reason in law or logic to limit the DGE's proofs in this regard to the month of January 1983. The complaint alleged that the advertising and promotional campaign concerning the Dream Machines were misleading, without limiting the period of that violation to January 1983. Indeed, it is undeniable that the advertising campaign was in operation during the March 1983 period for which the EDP reports were offered. We also note the testimony of Louise Patterson who indicated that she had been enticed by an advertisement in March 1983 to use the Dream Machine. Moreover, the exhibits which were stipulated into evidence by the parties and accepted as fact by the ALJ did not, with the sole exception of the press release, specifically limit the period in question to January 1983. Rather, the advertisements simply indicated that the best odds in Atlantic City were available.

The Commission agrees with the ALJ's subsequent assessment of this matter as stated in his initial decision at

page 11, wherein he seemingly contradicted his evidentiary ruling and discounted BRC's contention that January 1983 should be the only relevant month concerning advertisements dealing with a comparison of payout percentages. Accordingly, we conclude that the reports and attending testimony of Bruce Lampa should have been admitted. In addition, we note the testimony of Paul Tjoumakaris, Slot Manager at Caesars, who acknowledged that there was a possibility that more than one dollar slot machine at another casino offered a payout percentage of 95% or better.

CONCLUSIONS OF LAW

The DGE has the burden of proving the within charges against BRC by a preponderance of evidence. In his initial decision, the ALJ ruled that the DGE sustained its burden regarding Counts I and II (odds and misleading advertising) but not as to Counts III and IV (offer of alcoholic beverages and barking). After reviewing this matter in its entirety, the Commission, for reasons set forth below, affirms and adopts the conclusions of the ALJ pertaining to odds, misleading advertising and barking. We modify the ruling regarding the unlawful offer of alcoholic beverages to find a violation of N.J.S.A. 5:12-103(g)(1).

A. Did BRC's advertisements improperly provide information about gaming odds?

Pursuant to N.J.S.A. 5:12-70(o), the Commission is empowered to promulgate regulations pertaining to advertisements by casino licensees. Section 70(o) provides in part that these regulations:

> ...shall not prohibit the advertisement of casino location, hours of operation, or types of games and other amenities offered, but in no circumstance shall permit the advertisement of information about odds, the number of games, or the size of the casino...(emphasis added).

Pursuant to this legislative directive, the Commission promulgated a regulation, N.J.A.C. 19:51-1.3(b), which expressly prohibits advertisements which divulge any information concerning gambling odds.[4]

BRC stipulated to the fact that it placed advertisements describing the Dream Machine in numerous newspapers and magazines and on billboards and transit vehicles. It also admitted to mailing brochures to approximately 39,000 of its casino patrons. The advertisements included such statements as "you get the most beautiful odds in town," and "the best odds and the best treatment." In addition, BRC's press release of March 9, 1983, offered in conjunction with the promotional

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4. N.J.A.C. 19:51-1.3(b) provides:

> No advertising shall divulge any information concerning the size of the casino, gambling odds available or the numer of games at the casino. Advertising may divulge, however, the location of the casino, its hours of operation, amenities available or the types of games available.

advertisements, stated "these new machines offer the best odds in Atlantic City history," and "the Dream Machine's true odds are a 95% return."

Clearly, such advertisements unlawfully divulge information concerning gambling odds available. BRC's assertion that the regulation proscribes only specific numerical information ignores the plain language and intent of the statute as well as prior Commission rulings. We have previously held that the conveyance of any information about odds is strictly prohibited by section 70(o). See, e.g., In the Matter of a Petition of BRC for a Declaratory Ruling as to the Applicability of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b) to Notices of Availability of Supplemental Wagers Under N.J.S.A. 19:47-1.6, Petition No. 278101 (1982); State v. G.N.A.C. Corp. Docket No. 82-34 (1983); State v. Greate Bay Hotel & Casino, Inc., Docket No. 83-29 (1984).

Moreover, as the ALJ ruled, there is also no merit to BRC's claim that its press release did not constitute advertising. "Advertisement" is defined in Black's Law Dictionary (Rev. 4th Ed.) as:

> Notice given in any manner designed to attract public attention...Information communicated to the public, or to an individual concerned, as by handbills or the newspaper...(citations omitted).

BRC's obvious purpose in issuing this press release was to make the public aware of its Dream Machines. The press release therefor constitutes an advertisement as that term is used in

section 70(o) and N.J.A.C. 19:51-1.3(b). It is also undeniable that the release specifically referred to numerical odds. Thus, even under BRC's theory of what constitutes impermissible advertising of gambling odds, this press release violated the regulation prohibiting such advertisements.

B. Were BRC's Advertisements misleading and deceptive?

Pursuant to section 70(o) of the Act, the Commission is empowered to promulgate regulations:

> Governing the advertising of casino licensees, their employees and agents, with the view toward assuring that such advertisements are in no way deceptive. (Emphasis added).

The Commission adopted N.J.A.C. 19:51-1.2(e), which provides:

> Advertising shall be based upon fact, and furthermore, none of it shall be false, deceptive or misleading in any manner whatsoever. Without limitation as to the generality of the foregoing requirement such advertising shall conform to applicable provisions of the relevant state and federal law which proscribe false advertising.

N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act, which is incorporated by reference in the foregoing regulation, provides:

> The act, use or employment by any person of any...deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sales or advertisement of any merchandise..., whether or not any person has in fact been misled or damaged thereby, is declared to be unlawful practice.

The ALJ ruled that sufficient evidence was presented to show that BRC's advertisement slogans "the best odds" and "win more, play longer," were misleading. He rejected BRC's contentions that the statements were accurate and that it was never proven that any competitor afforded better odds. BRC reasserted this position in its argument before the Commission.

It was undisputed that the Dream Machine's true payout percentage during the months of January through March 1983 was 95%. The highest average payout percentage for all one dollar slot machines of any of BRC's competitors in January 1983 was 89%. However, this fact is not conclusive. As the ALJ observed, when comparing these percentage payouts it is essential to realize that the Dream Machines are only one type of dollar slot machine and that their payout percentage is being compared with the average payout percentage for all one dollar slot machines of BRC's competitors. Thus, a given slot machine of a competitor might have had a percentage greater than 95%, since the 89% figure reflects an average percent return. Accordingly, we conclude that the advertisements which did not reveal that the assertion "the best odds" was based on a comparison of one type of dollar slot machine, the Dream Machine, to the average percentage payout of all dollar slot machines of a competitor, had the capacity to mislead.

In determining the question of whether these advertisements violated section 70(o) of the Act or the pertinent Commission regulation, 19:51-1.2(e), the standard to

be applied is whether the advertising has the capacity to mislead or possesses the likelihood of deception. By its nature, this decision requires a determination that relies heavily on inferences and pragmatic judgment. The statute and regulatory provisions are aimed at the overall tenor of an advertisement and whether the advertisement read as a whole has the capacity or likelihood to deceive. As noted in Aronberg v. F.T.C., 132 F. 2d 165, 167 (7 Cir. 1942):

> ...[t]he cardinal factor is the probable effect which the advertiser's handiwork will have upon the eye and mind of the reader...The buying public does not ordinarily carefully study or weigh each word in the advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also all that is reasonably implied.

See also In re Shack, 177 N.J. Super. 358, 363 (App. Div. 1981).

In this case, the advertisements represented that a patron would be able to win more money by playing the Dream Machines at Caesars because these machines paid out better than any other dollar slot machine. The failure to advise the public that these representations were based on comparisons with the average percentage payout of other machines is critical because such an omission gives rise to the capacity to mislead. If so advised, a patron could reasonably infer the possibility that some machines offered higher payouts. Without such a representation, the patron is left with the impression that the Dream Machines compared favorably with any other machine ever in

use in Atlantic City. Testimony offered at the hearing demonstrated otherwise, revealing that at least thirteen dollar slot machines in operation during October 1982 and March 1983 offered payout percentages equal to or greater than 95%. The ALJ did not consider this testimony in reaching his decision. However, even apart from such evidence indicating the existence of other higher-paying machines, there was sufficient evidence in the record for the judge to find a violation. Accordingly, although we have revised the initial decision to allow this evidence and have accepted the evidence of higher paying machines during the relevant period as fact, our decision would be the same even absent the additional evidence.

C. Did BRC's advertisements and promotional campaign constitute an unlawful offer of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(1)?

N.J.S.A. 5:12-103(g)(1) provides in pertinent part that no alcoholic beverages are to be offered unless so requested by the patron. See also N.J.A.C. 19:50-1.7(a). BRC's advertisements and promotional brochures which were mailed by BRC to approximately 39,000 casino patrons contained the following statement:

> As a Caesars one dollar slot player,
> you'll really enjoy the VIP treatment.
> We'll make sure you always have drinks
> and change.

In addition, the informational cards carried by BRC employees relative to the Dream Machine contained the instruction that

casino personnel will make sure that patrons "always have plenty of drinks and change."

The DGE maintained before the ALJ that the promotional brochures constituted an unlawful offer of alcoholic beverages, within the purview of section 103(g)(1) of the Act. BRC asserted that its promotion did not violate this section because the term "alcoholic beverage" was not used nor did it specifically offer anything to patrons. The ALJ rejected BRC's first contention, concluding that it was reasonable to infer that the word "drinks" in the advertisements referred to alcoholic as well as non-alcoholic beverages. We concur with this finding that the promotion concerned alcoholic beverages.

A similar argument was previously made before the Commission by Bally's Park Place, Inc. with respect to a two-for-one promotion. See State v. Bally's Park Place, Inc., Docket No. 82-64 (1984). In that instance, Bally asserted that a two-for-one promotion was only prohibited if it conditioned receipt of a free drink upon the purchase of an alcoholic beverage, whereas Bally permitted the customer the option of purchasing a non-alcoholic beverage. In adopting the initial decision of Hearing Commissioner Carl Zeitz, the Commission rejected Bally's claim and ruled it was irrelevant that patrons could have purchased non-alcoholic beverages because the option of purchasing alcoholic beverages clearly existed. The same conclusion is warranted in this case.

Having found that alcoholic beverages were involved, the ALJ then turned to the question of whether an offer had been made pursuant to section 103(g)(1). He concluded that it was unreasonable to infer that the words, "we'll make sure you always have drinks and change," indicated that alcoholic beverages would be available for consumption or offered absent a request by the patron. The ALJ determined these words to mean that if a patron requested an alcoholic beverage, BRC employees would make sure the patron received the beverage and, therefore, there was no violation. We disagree with the ALJ's conclusion and hold that the advertisements violated section 103(g)(1).

The statute clearly prohibits a casino licensee from attempting to promote drink orders and from initiating the solicitation or offer of alcoholic beverages to a patron. The intent of the law is that the patron must initiate any request. In this instance, the licensee initiated the process by virtue of the advertisements, and in effect, invited and encouraged alcoholic consumption. Such action by BRC is contrary to the intent and spirit of the law to restrict activities which are designed to cause or which result in undue stimulation of alcoholic consumption on the casino floor. There is no mention in the advertisements that a patron would have to request the drink, only that BRC would supply it to players.

The policy considerations of section 103(g)(1) dictate against the ALJ's conclusion. In adopting this provision the Legislature was attempting to strike a compromise between those

parties who feared the devastating effect upon the gaming patron of the combination of alcohol and gaming, and the casino licensees who asserted that the availability of liquor on the casino floor was necessary to attract players accustomed to the so-called "Nevada style" of gaming. The resulting compromise was designed to prevent the casinos from doing anything to actively encourage drinking by patrons, while still making liquor available upon request. The purpose was to make it somewhat more difficult to obtain a drink by requiring the patron to take the initiative rather than the casino. The focus is on which party takes the initiative. If, as in this case, the licensee attempts to promote alcoholic consumption or exerts pressure, however subtle, upon the patron, there is a violation. Further, a sensible reading of the advertising copy as a whole would convey the impression that a Dream Machine player is a "VIP" and thus entitled to free drinks in the same manner as other preferred customers. Ms. Patterson's testimony confirms this inference. Thus, we modify the initial decision to find a violation of section 103(g)(1).

D. Did BRC use a barker to promote the Dream Machine?

Pursuant to N.J.S.A. 5:12-100(1):

> It shall be unlawful for any casino licensee or his agents or employees to employ, contract with, or use any shill or barker to induce any person to enter a casino or play at any game or for any purpose whatsoever.

The DGE contended that the buttons worn by BRC casino personnel, which stated "Ask Me About Dream Machines," together with the printed cards carried by BRC employees, which contained information they were to impart to patrons when asked about the Dream Machines, constituted a violation of N.J.S.A. 5:12-100(1). The ALJ disagreed and ruled that no violation occurred. He

concluded that the buttons were informational and passive in nature and were therefore outside the purview of the Act. The DGE filed an exception, urging the Commission to modify this portion of the initial decision as too narrow in scope in attempting to construe the barking provision of the Act.

The terms "barking" or "barker" are not defined in the Act nor is there any legislative history surrounding section 100(1) to assist in determining its proper parameters. A barker is commonly thought of as a person who stands outside a theater, store or carnival trying to attract customers by calling out to passersby to enter. The solicitations are frequently made in a loud, aggressive fashion, although it is not altogether clear that this aspect is necessary to constitute barking. Moreover, in the context of casino gaming, it is not necessary that the barker be situated outside of the casino.

To determine whether the barking provision has been violated we must consider not only the substance of the message conveyed but also the manner and method of the delivery. This reflects the fact that the Casino Control Act, taken as a whole, strives not only for the prevention of a "honky-tonk" atmosphere, but also for the maintenance of a facility in which the inducement to gamble is not so intrusive as to be overwhelming.

Upon careful review of this record, we fail to find sufficient evidence of a violation of section 100(1). No proofs were introduced to show that the information cards accompanying the buttons were ever utilized or that patrons actually inquired

about the Dream Machine. There is also no indication of the manner in which the message would be conveyed to the public. Thus, we are left with only the buttons which we find to be more informational than intrusive. We conclude that the buttons alone did not create the kind of atmosphere connoted by the term barking. Accordingly, we adopt the ALJ's ruling that no violation of section 100(1) was proven.[5]

PENALTY

BRC has argued in its brief that, pursuant to N.J.S.A. 5:12-129, the penalty for all misconduct arising out of one promotional campaign, such as the Dream Machine, may not exceed $50,000. We note, however, that counsel for BRC did not appear to seriously pursue this theory at oral argument. In any event, we adamantly reject such a notion. The statute's intent was merely to impose a ceiling on the fine that could be imposed for an individual violation and was not designed to limit the ability of the Commission to impose multiple fines for multiple infractions, in an amount exceeding the $50,000 figure. In this case, we have found three separate violations. They are independent infractions although originating from the same promotional campaign. Accordingly, three separate fines, each with a potential maximum of $50,000, could be imposed.[6]

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5. A word of caution is in order. Our holding in this case is not a blanket approval of the use of buttons similar to those employed here. Allegations of a violation of section 100(1) will require close scrutiny on a case-by-case basis.

6. Since the Division only charged three violations of the type we have herein affirmed, we need not comment on whether additional violations may have been charged or found. However, we note that under section 123 of the Act, a continuing violation of any provision of the law is deemed to be a separate offense on each day it occurs.

Pursuant to section 130, the Commission shall consider the following factors in imposing an appropriate sanction for violations of the Act:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of a licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of the Act or regulations promulgated thereunder.

c. Any justification or excuse for such conduct by the licensee or registrant.

d. The prior history of the particular licensee or registrant involved with respect to gaming activity.

e. The corrective action taken by the licensee or registrant to prevent future misconduct of like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant.

We view the infraction relating to the advertisement of odds as particularly flagrant, warranting stern punishment. There can be no justification for implementing this aspect of the promotion in light of the clear language of the statute. Moreover, BRC's prior experience concerning advertisements regarding odds must also be considered. BRC began this endeavor one year after the Commission specifically ruled that it was not to provide information about odds by way of advertisements. See In the Matter of a Petition of BRC, supra. Clearly, BRC knew that such action was unlawful in light of its prior experience

and that of other licensees in similar circumstances. See, State v. G.N.A.C. Corp., supra, and State v. Greate Bay Hotel and Casino, supra.

BRC has represented that similar advertisements are commonplace in Atlantic City and maintains that this fact should mitigate punishment. If what BRC suggests is indeed true, we trust that our decision in this case will serve to deter other casino licensees as well as BRC from using advertisements of this nature.

With respect to the remaining charges, the potential risk to the public engendered by misleading advertising and improper inducements to gamble must be considered as an aggravating factor. On the other hand, the fact that BRC may have been unaware that its conduct was prohibited with respect to the offer of alcoholic beverages is a mitigating factor in considering an appropriate penalty. N.J.S.A. 5:12-130(g).

Accordingly, we impose the following monetary penalty upon the respondent: (1) for advertising information about odds - $40,000; (2) for misleading advertising - $30,000, and (3) for offering alcoholic beverages - $5,000 - for a total of $75,000.

CONCLUSION

For the foregoing reasons, we affirm and adopt the initial decision insofar as it found violations for advertising information about odds and misleading advertising and the finding of no violation regarding barking. We modify the

initial decision to find a violation of section 103(g)(1) of the Act concerning the offer of alcoholic beverages. In addition, we modify the initial decision to make an additional finding of fact that there existed other dollar slot machines in Atlantic City which exceeded the payout percentage of BRC's Dream Machines. Finally, we impose a civil monetary penalty totaling $75,000.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman

E. Kenneth Burdge, Vice Chairman

Joel R. Jacobson, Commissioner

Carl Zeitz, Commissioner

DATED: April 24, 1985.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION
OAL DKT. NO. CCC 6829-83
AGENCY DKT. NO. 83-70

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
BOARDWALK REGENCY CORPORATION,
Respondent.

Katherine A. Smith, Deputy Attorney General, for petitioner (Irwin I Kimmelman, Attorney General of New Jersey, attorney)

J. Michael Nolan, Jr., Esq., for respondent (Pitney, Hardin, Kipp and Szuch, attorneys)

Record Closed: September 5, 1984 Decided: November 5, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement against Boardwalk Regency Corporation (BRC) filed with the Casino Control Commission on Mareh 21, 1983, pursuant to N.J.S.A. 5:12-76(a). In its complaint, the Division alleges that BRC has violated various provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) regulations adopted thereunder, and other statutes and regulations, with regard to its advertising and promotional campaign concerning a one dollar slot machine known as the Dream Machine. The Division seeks imposition of an appropriate penalty, in accordance with the standard set forth at N.J.S.A. 5:12-130. The issues to be determined in this matter are as follows:

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1. Whether BRC's Dream Machine advertisements improperly provided information about gaming odds, in violation of section 70(o) of the Casino Control Act.

2. Whether BRC's Dream Machine advertisements were deceptive and misleading, in violation of N.J.S.A. 5:2-70(o), N.J.S.A. 56:8-2 and N.J.A.C. 19:51-1.2(e).

3. Whether BRC's Dream Machine advertisements impermissibly made an offer of alcoholic drinks, in violation of section 103g(1) of the act and N.J.A.C. 19:50-1.7(a).

4. Whether BRC's Dream Machine advertising constitutes an improper inducement to gamble, in violation of section 100(1) of the Casino Control Act.

PROCEDURAL HISTORY

On March 16, 1983, the Division of Gaming Enforcement petitioned the Casino Control Commission for a cease and desist order against the respondent Boardwalk Regency Corporation, which order would enjoin BRC's ongoing advertising campaign concerning certain dollar slot machines referred to as Dream Machines. Pursuant to N.J.S.A. 5:12-109a(3), the Commission issued the cease and desist order on March 17, 1983 (Exhibit J-1I). On March 21, 1983, the Division filed its formal complaint against BRC with the Commission.

The first prehearing conference in this matter was held on August 11, 1983, before the Honorable Joel R. Jacobson, Commissioner. On August 26, 1983, the Commission transmitted the matter to the Office of Admininstrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A second prehearing conference was held on October 24, 1983, before Administrative Law Judge Norman D. Smith. On that date, Judge Smith granted the Division's motion to amend its complaint, which had been filed on March 21, 1983. The factual and legal issues raised by the amended complaint were clarified and hearing dates were scheduled for January 17 and 18, 1984.

At the request of the respondent BRC, the hearing was adjourned and rescheduled for March 9, 1984. A second request for an adjournment by BRC was also granted and the matter was rescheduled for hearing on April 16, 1984.

Prior to the scheduled hearing on April 16, 1984, the parties entered into and agreed upon a detailed and comprehensive stipulation of facts, which was accompanied by nine exhibits (Exhibit J-1A through I). Immediately prior to the taking of testimony on the morning of April 16, 1984, this matter was reassigned from Judge Smith to the undersigned for hearing.

On April 19, 1984, the Division made a motion to supplement the evidentiary record with certain documents, known as slot movement logs, from the Tropicana Hotel and Casino and Harrah's Marina Hotel and Casino. Telephone oral argument was heard on this motion on May 25, 1984. I determined that the moving papers of the Division did not adequately authenticate the slot movement logs and that the papers did not provide an adequate foundation for their admission. However, by order, dated June 20, 1984, I determined that the Division should be permitted to attempt to supplement the evidentiary record at an additional hearing session, pursuant to N.J.A.C. 1:1-15.2(a), (b) and (d) and N.J.A.C. 1:1-16.1. The additional evidentiary proceeding was conducted on July 20, 1984. The record in this matter closed on September 5, 1984, upon receipt of the post-hearing submissions of the parties.

FINDINGS OF FACT

Prior to the commencement of the hearing in this matter, counsel for the parties agreed to a stipulation of facts, with attached exhibits. This stipulation was admitted into evidence as Exhibit J-1A through I. Having reviewed the stipulation of facts and attached exhibits, I make the following findings of undisputed facts:

1. On or about December 12, 1982, a tease advertisement placed by BRC appeared in The Atlantic City Press (Exhibit J-1A), stating "The Dream Machines are coming to Caesars."

2. On or about December 18, 1982 and January 1, 1983, a tease advertisement placed by BRC appeared in The Atlantic City Press and the Atlantic City Magazine, respectively (Exhibit J-1B).

3. On or about February 24, 1983, BRC launched a multi-media advertising campaign to promote its dollar slot machines, known as Dream Machines.

4. On or about March 1, 1983, advertisements placed by BRC promoting the Dream Machines appeared in approximately twenty-five (25) newspapers, three (3) magazines, on billboards and on transit vehicles.

5. The advertisements which appeared in the newspapers and magazines used advertising slogans such as "Win more, play longer, at the most exciting one dollar slots in Atlantic City history;" "The most beautiful odds in town;" "the best odds;" and "As a Caesars one dollar slot player, we'll make sure you always have drinks and change" (Exhibit J-1D).

6. In conjunction with its advertising campaign concerning the Dream Machines, a statement to the press was released by BRC on March 9, 1983 (Exhibit J-1E). In this press release, BRC management stated that the Dream Machines "offer the best odds in Atlantic City's history" and that the "Dream Machines' true odds are a 95% return, while our nearest competitor's odds on dollar slots, in January, were only an 89% return" (Exhibit J-1E).

7. The Dream Machine's true payout percentage during the period relevant to this proceeding was 95%. The payout percentage for all of BRC's dollar slot machines in January 1983 was an average of 87.3% (Exhibit R-1). The best average return for a competitor of BRC on all of its dollar slots in January 1983 was an average payout of 89% (Exhibits R-2 through R-9).

8. Also in conjunction with its advertising campaign, BRC mailed a promotional brochure about the Dream Machines to approximately 39,000 patrons. The promotional brochure provided the same information as was contained in the magazine and newspaper advertisements (Exhibit J-1F).

9. In conjunction with the promotion of the Dream Machines, BRC also distributed buttons and cards to its casino floor personnel (Exhibit J-1G).

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The buttons state, "Ask me about Dream Machines." The cards, which are marked "For Caesars employees only," contain printed information about the Dream Machine in the form of responses to the question, "What is a Dream Machine?" Included in the information on the card is the statement that, "Dream Machines have the highest return percentage to one dollar slot players in Atlantic City: 95% verses an average of no more than 89% at any other casino in town." The card also contains the instruction that casino personnel will make sure that patrons, "Always have plenty of drinks and change."

10. As of March 1, 1983, there were approximately 100 Dream Machines in operation on BRC's casino floor (Exhibit J-1G). As of November 4, 1983, there were 158 Dream Machines in operation on BRC's casino floor (Exhibit J-1H).

11. On March 17, 1983, as a result of the petition filed by the Division of Gaming Enforcement, the Casino Control Commission issued a cease and desist order requiring BRC to halt the utilization, in any manner whatsoever, of the advertisements which appeared in the aforementioned newspapers and magazines, as well as the buttons and cards which were distributed to casino personnel. BRC was further ordered to submit any further advertising or promotional campaign material concerning the Dream Machines to the Commission for approval prior to the utilization of said material (Exhibit J-1I).

12. Prior to the placing of the advertisements concerning the dream machines, and prior to distributing the aforementioned buttons and cards to its casino employees, BRC did not seek a declaratory ruling from the Commission, pursuant to N.J.A.C. 19:51-1.2(f), on the propriety of the advertisements.

13. BRC has complied with the Commission's cease and desist order issued on March 17, 1983.

Testifying on behalf of the Division of Gaming Enforcement was Louise Patterson, an Atlantic City resident who is a patron of licensed casinos once or twice a month. According to Ms. Patterson, she went to Caesars Boardwalk Regency on March 24, 1983, to follow up on an advertisement she had seen in Philadelphia Magazine. This advertisement extolled the virtues of the Dream Machine, including offering the best odds in Atlantic City and the opportunity to play longer and win more. After some difficulty, Ms. Patterson located a Dream Machine at the end of a corridor and proceeded to play the machine with ten dollars. After winning nothing, she looked for a security guard and asked for a drink. Ms. Patterson was told that the waitresses had not started working yet that morning, since the casino had just opened, and no drinks were available. The testimony of Ms. Patterson is undisputed and believable, and is thus **FOUND AS FACT.**

The Division of Gaming Enforcement also offered the testimony of Chief Engineer Bruce R. Lampa, who is in charge of the Division Slot Machine Unit. After being qualified as an expert on slot machines, Mr. Lampa testified concerning monthly Electronic Data Processing (EDP) reports which show the percentage payout for each slot machine at each licensed casino. Pursuant to the testimony of Mr. Lampa, the Division offered EDP reports from Harrah's Marina Hotel and Casino for December 1, 1982 and March 16, 1983 (Exhibit D-2 for identification). The Division also offered EDP reports from the Tropicana Casino for October 28, 1982 and March 22, 1983 (Exhibit D-3 for identification). Reading from these documents, Mr. Lampa stated that Harrah's had six one dollar slot machines in December 1982 and March 1983 which had a payout percentage greater than 95%, and the Tropicana had seven one dollar slot machines in October 1982 and March 1983, which had a payout percentage greater than 95%. However, counsel for BRC objected to the admission of the EDP reports, contending that January 1983 was the only month relevant to the issue of whether the Dream Machines actually had the highest payout percentage of one dollar slot machines, since the press release issued that month referred only to competitors' odds on dollar slots in January. Although given the direct opportunity to dispute the assertion that January was the relevant month, counsel for the Division did not do so. I then asked Mr. Lampa if he was able to determine the January 1983 payout percentages from the EDP reports which preceded and followed January 1983 and he repled, "No." As a result, Exhibits D-2 and D-3 for identification were excluded from evidence as not relevant to a material issue since they did not pertain to the month of January 1983. That portion of Mr. Lampa's testimony which was merely a recitation

from these excluded documents cannot be considered for the same reason the documents were excluded. However, the rest of his testimony, including the description of the use of EDP reports, remains in evidence.

Three days after the hearing session on April 16, 1984, the Division of Gaming Enforcement moved to supplement the evidentiary record with certain documents, known as slot movement logs, from the Tropicana Hotel and Casino and Harrah's Marina Hotel and Casino. An additional evidentiary proceeding was conducted on July 20, 1984, at which time the Division of Gaming Enforcement was permitted, in the interests of justice and to aid in the ascertainment of the truth, to attempt to supplement the evidentiary record, pursuant to N.J.A.C. 1:1-15.2 and 16.1. Testifying on behalf of the Division of Gaming Enforcement at the additional evidentiary hearing was William Ronca, who was formerly the slot manager at the Tropicana Hotel and Casino.

It was the testimony of Mr. Ronca that all changes in payout percentages of slot machines would be recorded on slot movement logs, even if the machine was not physically moved from the casino floor. Intending to show that the payout percentages of one dollar slot machines at Harrah's were not changed in Janaury 1983, the Division of Gaming Enforcement offered the slot movement logs for Harrah's for the months of November and December 1982 and January 1983 (Exhibits D-5A to K).

Counsel for BRC objected to the admission of the slot movement logs, arguing that they were irrelevant in the absence of EDP reports which would establish the percentage payouts for individual one dollar slot machines. Counsel for the Division of Gaming Enforcement was asked if she intended to offer the EDP reports. She had indicated at the oral argument on the motion to supplement the evidentiary record that she did not intend to offer the EDP reports and she again stated that she would not offer the reports, but rather, would rely on the testimony of Mr. Lampa in regard to the payout percentage of certain one dollar slot machines. However, as discussed above, that testimony cannot be used to prove the contents of the EDP reports which had previously been excluded from evidence. Since the Division declined to again offer the EDP reports, the offered slot movement logs were not linked to any one dollar slot machine payout percentage figures period, thus, the movement logs had no independent probative value and they were not admitted into evidence.

CONCLUSIONS OF LAW

The Division of Gaming Enforcement has filed its complaint against the respondent BRC pursuant to N.J.S.A. 5:12-76 and 108. The Division contends that the Dream Machine advertising and promotional campaign developed and implemented by the respondent BRC was violative of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3 (b), in that information about odds was advertised; was violative of N.J.S.A. 5:12-70(o), N.J.A.C. 19:51-1.2(e), N.J.S.A. 56:8-2 and N.J.A.C. 13:45(a)-9.2(9), in that the advertising was false, misleading and deceptive; was violative of N.J.A.C. 19:50-1.7(a) in that alcoholic beverages were offered by way of the advertisements; and was violative of N.J.S.A. 5:12-100(l), in that the campaign included instructions to BRC employees to induce patrons to gamble. It is the burden of the Division of Gaming Enforcement to establish its charges against the respondent BRC by a preponderance of the relevant and credible evidence.

Pursuant to N.J.S.A. 5:12-70(o), the Casino Control Commission is empowered to promulgate regulations pertaining to advertisements by casino licensees. Section 70(o) provides in part that these regulations:

> . . . shall not prohibit the advertisement of casino location, hours of operation, or types of games and other amenities offered, but in no circumstance shall permit the advertisement of information about odds, the number of games, or the size of the casino . . . [emphasis added]

Pursuant to this legislative mandate, the Commission promulgated the regulation set forth at N.J.A.C. 19:51-1.3(b), which provides, in part:

> No advertising shall divulge any information concerning the size of the casino gambling odds available or the number of games at the casino . . . [emphasis added]

It is undisputed that BRC's Dream Machine dollar slot machine advertising and promotional campaign included numerous newspaper and magazine advertisements, as well as advertising on billboard and transit vehicles. The advertising campaign also included the mailing of brochures or leaflets about the Dream Machine to approximately 39,000 BRC casino patrons. These advertisements included statements such as, "You get the

most beautiful odds in town," and, "The best odds and the best treatment." In addition, BRC's statement to the press of March 9, 1983, offered in conjunction with the promotional advertisements, stated, "These new machines offer the best odds in Atlantic City history," and, "the Dream Machine's true odds are a 95% return."

It is the contention of BRC that the aforementioned statute and regulation prohibit only specific numerical information about the casino and its games and its odds, rather than mere puffery. BRC argues that since its published advertisements and promotional brochures do not quote or refer to numerical odds or payoff percentages, that they are not violative of the applicable statute or regulations. Further, BRC contends that descriptions such as, "Most beautiful odds," and, "Best odds," are merely words of puffery. Finally, BRC contends that the record in this matter does not establish that its press release was ever published or communicated to the public and that the mere issuing of the release, which admittedly did refer numerically to the Dream Machine's 95% return, did not constitute advertising.

I do not accept the respondent's contentions. It is clear that a statement such as, "best odds," does divulge information concerning gambling odds available, and I do not read in the applicable statutes and regulations any condition which limits the prohibition to reference to numerical odds. Further, it is clear that the purpose of the press release was to advertise the Dream Machine promotion to the public. This advertisement did refer to numerical odds, and it is undisputed that this advertising statement in the form of a press release was issued by BRC on March 9, 1983. Based upon the foregoing discussion, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing that BRC's Dream Machine advertising and promotional campaign provided information about odds in violation of section 70(o) of the Casino Control Act and N.J.A.C. 19:51-1.3(b).

Pursuant to the aforementioned section 70(o) of the Casino Control Act, the Commission is empowered to promulgate regulations:

> Governing the advertising of casino licensees, their employees and agents, with the view toward assuring that such advertisements are in no way deceptive . . . [emphasis added]

Pursuant to the statute, the Casino Control Commission adopted N.J.A.C. 19:51-1.2(e), which provides:

> Advertising shall be based upon fact, and furthermore, none of it shall be false, deceptive or misleading in any manner whatsoever. Without limitation as to the generality of the foregoing requirement such advertising shall conform to applicable provisions of the relevant state and federal law which proscribe false advertising.

N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act, which is incorporated by reference in the foregoing regulation, provides:

> The act, use or employment by any person of any . . . deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with intent that others rely upon such concealment, supression or omission, in connection with the sales or advertisement of any merchandise,. . . whether or not any person has in fact been misled or damaged thereby, is declared to be unlawful practice.

The general advertising practices regulation, N.J.A.C. 13:45(a)-9.2(9), also incorporated by reference in the foregoing regulation, states:

> Without limiting the application of N.J.S.A. 56:8-8.1 et seq., the following practices shall be unlawful with respect to all advertisements: the making of false or misleading representation of facts concerning . . . the nature of an offering.

It is the contention of BRC that its use of superlatives and other representations in its Dream Machine advertisements and promotional campaign was not false, deceptive or misleading. BRC argues that none of its representations were used in a context that was calculated to deceive and that its advertisements were innocuous and fall within a reasonable reading of acceptable advertising practices, as governed by the applicable statutes and regulations. It is BRC's assertion that statements such as "the most exciting one dollar slots in Atlantic City history," are statements of puffery and that statements such as, "Win more, play longer," and, "The best odds," are statements which were based upon fact, within the meaning of N.J.A.C. 19:51-1.2(e).

It is undisputed that the Dream Machine's true payout percentage during the months of January through March 1983 was 95%. I have found that the highest average payout percentage for all one dollar slot machines of any of BRC's competitors in January 1983 was 89%. When comparing these percentage payouts, it is essential to realize that the Dream Machines are only one type of dollar slot machine and that their payout percentage is being compared with the average payout percentage for all one dollar slot machines of BRC's competitors. A given slot machine of a competitor might have had a percentage greater than 95%, since the 89% figure reflects an average percent return. BRC's advertisements which stated that the Dream Machine had, "The best odds," but which did not disclose that this assertion was based on a comparison of one type of dollar slot machine, the Dream Machine, to the average percentage payout of all dollar slot machines of a competitor, had the capacity to mislead. Similarly, the press release which compared the Dream Machine's 95% return to the competitor's 89% return, without mentioning that the 89% return was an average figure, was misleading.

BRC contended at the hearing that January 1983 was the only relevant month concerning advertisements dealing with a comparison of payout percentages. The accuracy of this contention is doubtful, since the majority of advertisements and the press release appeared in March 1983. However, it is true that the press release referred to the competitor's 89% return on one dollar slot machines in January 1983, and the Division of Gaming Enforcement did not dispute BRC's contention that January 1983 was the only relevant month for comparison. Nevertheless, if January 1983 is the only relevant month for comparison, advertisements stating, "The best odds," which appeared in March 1983, have the capacity to mislead because they do not state the comparison is based on percentage payout figures from an earlier month.

Based upon the findings of fact and the foregoing discussion, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing that BRC's Dream Machine advertising and promotional campaign was misleading, within the meaning of sections 70(o) of the Casino Control Act and N.J.A.C. 19:51-1.2(e).

N.J.A.C. 19:50-1.7(a), which regulation was adopted pursuant to N.J.S.A. 5:12-103g(1), provides:

> No food or alcoholic beverage, other than nonalcoholic beverages or garnishments used in the preparation of alcoholic beverages for consumption by the glass shall be sold, given or be available for

> consumption, offered, delivered or otherwise brought to a patron or consumed at a gaming table unless so requested by the patron.

It is undisputed that the Dream Machine advertisements and promotional brochures which were mailed by BRC to approximately 39,000 casino patrons contained the following statement:

> As a Caesars one dollar slot player, you'll really enjoy the VIP treatment. We'll make sure you always have drinks and change.

BRC contends that its Dream Machine advertisements and pomotional devices do not violate N.J.A.C. 19:50-1.7(a) because they do not use the term "alcoholic beverage" and they do not specifically "offer" anything to "patrons." According to BRC, its advertisements merely offered "drinks" to potential patrons, and BRC casino employees did not offer alcoholic beverages to actual patrons, absent their request for the alcoholic beverages.

Since legalized gaming is an activity reserved for adults, it is fair to infer that the word "drinks" in the BRC advertisements and promotional brochures refers to alcoholic as well as non-alcoholic beverages. If BRC wanted to avoid the impression that it was referring to alcoholic drinks, it would have been simple enough to have specified "non-alcoholic drinks" in its advertisements. On the other hand, it is not a fair inference that the words, "we'll make sure you always have drinks and change," mean that drinks will be available for consumption or offered absent a request by the patron. It is fair to infer that these words mean that if a patron requests an alcoholic beverage, BRC employees will make sure the patron receives the beverage. Therefore, based upon the applicable statute and regulations and the foregoing discussion, I **CONCLUDE** that the Division of Gaming Enforcement has not established that BRC's Dream Machine advertising and promotional campaign impermissibly made an offer of alcoholic drinks in violation of N.J.S.A. 5:12-103g(1) and N.J.A.C. 19:50-1.7(a).

Pursuant to N.J.S.A. 5:12-100(1):

> It shall be unlawful for any casino licensee or his agency or employees to employ, contract with, or use any shill or barker to induce any person to enter a casino or play at any game or for any purpose whatsoever.

As part of its Dream Machine promotional campaign, BRC personnel were given buttons to wear which stated, "Ask Me About Dream Machines." Information cards were distributed to BRC employees which were marked "For Caesar's Employees Only," and which contained information which would permit the employees to respond to patrons' questions about the Dream Machines. The Division of Gaming Enforcement contends that the distribution of these buttons and cards to its casino employees evinces BRC's intention to use its employees to induce patrons to gamble, in violation of N.J.S.A. 5:12-100(1). The Division further contends that the entire Dream Machine advertising and promotional campaign developed and implemented by BRC constituted an improper inducement to gamble.

BRC argues that the words, "shill" or "barker" refer to persons and not inanimate objects. Thus, neither the promotional advertising nor the buttons could be characterized as shills or barkers. In addition, BRC contends that "barker" contemplates a person actively inducing people to participate, and that the buttons worn by some BRC employees merely advise their viewers to "ask" about the Dream Machines, rather than actively inducing any person to gamble.

It should be clear that the purpose of any casino advertising or promotional device is to attract customers. The question which must be answered is whether the advertisement or an aspect of the promotional program constitutes an improper inducement to a person to enter a casino or play at any game. The Dream Machine advertisements and promotional devices were essentially informational and passive in nature. I do not read section 100(1) of the Casino Control Act to include the Dream Machine advertising campaign and promotional devices within its prohibition against improper inducements to gamble. Therefore, I **CONCLUDE** that the Division of Gaming Enforcement has failed to establish that BRC's Dream Machine advertising and promotional campaign constituted an improper inducement to gamble, within the meaning of N.J.S.A. 5:12-100(1).

I have **CONCLUDED** that BRC's Dream Machine advertisements and promotional campaign provided information about odds in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b), and I have **CONCLUDED** that BRC's Dream Machine advertisements and promotional campaign were misleading, in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.2(e). After examining the standards for the imposition of sanctions set forth at N.J.S.A. 5:12-130, including the seriousness of the respondent's

conduct, the risk to the public and to the integrity of gaming operations created by its conduct, and the undisputed compliance of the respondent with the cease and desist order issued on March 17, 1983, I **CONCLUDE** that a monetary penalty in the amount of $30,000 is warranted, pursuant to N.J.S.A. 5:12-130f.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent Boardwalk Regency Corporation be assessed a civil monetary penalty in the amount of $30,000, pursuant to N.J.S.A. 5:12-130 and N.J.S.A. 5:12-129(5).

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 5, 1984
DATE

JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 15 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

Joint Exhibits:

J-1	Stipulation of Facts, with attached exhibits
J-1A-I	

For the Division of Gaming Enforcement:

D-1	Letter, dated February 22, 1983
D-2	Not in evidence
D-3	Not in evidence
D-4	Not in evidence
D-5A-K	Not in evidence

For the Respondent:

R-1-R-9	CC100 forms for January 1983 for BRC and eight competitors

WITNESSES

For the Division of Gaming Enforcement:

Bruce R. Lampa
Louise Patterson
William Ronca
Michael Allen

For the Respondent:

Paul F. Tjoumakaris

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-418
OAL DOCKET NO. CCC 0546-84
LICENSE NO. 23128-22

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
LEMUEL J. BRINSON,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 7, 1984, recommending that the respondent's casino employee license be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of October 17, 1984, to modify the said Initial Decision and to revoke the respondent's license,

IT IS on this 21st day of JANUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

> The Administrative Law Judge's conclusion that "[the respondent's] continued licensure would be inimical to casino operations" (Initial Decision at 3) is modified to reflect the Commission's express finding that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) by reason of his conviction

for credit card fraud in violation of N.J.S.A. 2C:21-6(d)(1), which offense occurred during the course of his employment with a casino licensee.

IT IS FURTHER ORDERED that the respondent's casino employee license be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Lemuel J. Brinson is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED tnat copies of this Final Order be served upon Lemuel J. Brinson, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 546-84

AGENCY DKT. NO. 83-418

STATE OF NEW JERSEY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,

v.

LEMUEL J. BRINSON,
Respondent.

APPEARANCES:

Paul Vagianos, Deputy Attorney General, for the petitioner (Irwing I. Kimmelman, Attorney General of New Jersey, attorney)

Lemuel J. Brinson, respondent, pro se

Record Closed: July 26, 1984 Decided: September 6, 1984

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking the revocation of respondent's casino employee license, pursuant to N.J.S.A. 5:12-1 et seq. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The basic facts are undisputed. In July 1983, respondent was indicted on charges of conspiracy, N.J.S.A. 2C:5-2, credit card fraud, N.J.S.A. 2C:21-6(d), and receiving stolen property obtained by credit card theft or fraud, N.J.S.A. 2C:21-6(g). It was alleged that between May and August 1982, respondent and seven others while employed at a gas station owned by Caesars Boardwalk Regency and located across the

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street from the casino facility, were involved in a credit card fraud scheme in which they utilized a series of lost or stolen credit cards to obtain money, goods and services from the casino. In total, it was alleged that there were some 243 separate fraudulent transactions, involving approximately $12,000. On September 23, 1983, respondent pled guilty to credit card fraud. He was sentenced to one year probation on condition that he serve 100 hours of community service, make restitution of $200, pay a fine of $300 and a penalty of $25 to the Violent Crimes Compensation Board. The other counts of the indictment were dismissed.

Petitioner also placed in evidence various reports of investigation in which respondent and his codefendants were separately interviewed prior to their indictment. Respondent acknowledged that he was aware of the illegal use of credit cards by some of the gas station employees, however, he denied any personal involvement. A few of the other individuals identified respondent as a member of the ring.

Petitioner believes, based on these reports and the guilty plea, that respondent does not possess the qualities of good character, honesty and integrity necessary to hold a casino employee license, N.J.S.A. 5:12-90 and that his continued licensure would be inimical to the policies of the act. N.J.S.A. 5:12-86.c.(4).

Respondent presented two defenses. In his initial testimony at the hearing and at the prehearing conference of the matter, he did not attempt to contest the validity of the conviction. He explained that he wanted to work in the casinos as an upholsterer and that as such he would not be involved with money or gaming, and thus would be in no position to commit crimes. He believed that his prior record should not weigh against him in that type of position. However, when questioned on cross-examination, he appeared to deny that he was actually involved in crimes and testified that he only pled guilty to credit card fraud because of the great expense and potential penalties which awaited him if he continued to maintain his innocence. He testified that all he did while acting as night manager of the gas station was to occasionally let a motorist obtain an extra $10 or $15 by adding that amount to his gas card after he had purchased gas at the station. The motorist would usually tip him a few dollars for this service and as far as he knew, it was the motorist's obligation to pay the bill from the credit card company. He had no idea why he had been charged with a crime and assumed that some motorist had failed to pay his bill and reported his card stolen or lost.

Though the record does not develop in detail the nature of the crimes alleged, respondent while represented by counsel, pled guilty to credit card fraud. As a threshold matter, he cannot now deny the underlying offense. At best he can explain any extenuating circumstances. Moreover, having reviewed the charges, the guilty plea, and the statements of a number of his codefendants, I do not find this latter testimony persuasive. With respect to his original argument, it does not follow that because respondent is seeking work in an area unrelated to gaming, that the casino can be assured that he would be involved in no further attempts to defraud it. Respondent's burden here was to present rehabilitation evidence, pursuant to N.J.S.A. 5:12-90. He did not.

Based on the foregoing, it is my conclusion that respondent does not now meet the criteria of good character, honesty and integrity required by the act and that his continued licensure would be inimical to casino operations. It is **ORDERED** that respondent's license be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE 9/6/84

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE 9/7/84

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE September 11, 1984

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

R-1 Indictment

R-2 Criminal Record

R-3 Investigation file

R-4 Investigation Summary Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-236
REGISTRATION NO. 40588-40
OAL DOCKET NO. CCC 342-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ANTHONY CAMPER,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on September 18, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of October 24, 1984, to affirm the findings of fact, but reject certain conclusions of law contained in the said Initial Decision and to find the respondent disqualified from holding a casino hotel employee registration; and the Commission having further resolved to waive said disqualification in the interests of justice pursuant to N.J.S.A. 5:12-91(e) and to dismiss the complaint against the respondent,

IT IS on this 12th day of FEBRUARY 1985, ORDERED that the Initial Decision be and hereby is modified as follows:

1. The Administrative Law Judge found that, while the Division had demonstrated that the respondent had been convicted on April 24, 1983, of arson in violation of N.J.S.A. 2C:17-1(a)(2), a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1), the respondent had nevertheless proved his rehabilitation from such disqualification pursuant to N.J.S.A. 5:12-91(d).

   Upon independent review of the record the Commission finds insufficient evidence to support a finding of rehabilitation.

IT IS FURTHER ORDERED that, in recognition of the respondent's substantial efforts toward rehabilitation to date, the disqualification of the respondent be and hereby is waived in the interests of justice pursuant to N.J.S.A. 5:12-91(e), and the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that the Initial Decison filed by the Office of Administrative Law be and hereby is affirmed and adopted as modified above and incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Anthony Camper and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

OAL
WORD PROCESSING
TRAILER

SEP 18 10 58 AM '84

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 0342-84
AGENCY DKT. NO. 83-236

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
ANTHONY CAMPER,
Respondent.

Joanne Cocchiola, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Anthony Camper, respondent, pro se

Record Closed: August 9, 1984 Decided: September 14, 1984

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (hereinafter referred to as the "Division") with the Casino Control Commission on July 25, 1983, seeking the revocation of the casino hotel employee registration issued to the respondent, Anthony Camper, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Camper requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on March 12, 1984, and at that time the parties agreed that the issues in this matter are:

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(1) whether the respondent is disqualified from licensure pursuant to N.J.S.A. 5:12-86c because of an alleged criminal conviction;

(2) whether the respondent can establish that he has been rehabilitated, pursuant to the provisions of N.J.S.A. 5:12-91d.

At the hearing on May 15, 1984, Mr. Camper indicated that he had sent copies of letters regarding his rehabilitation to the undersigned and to William Walsh, the deputy attorney general who represented the Division at the prehearing conference. Mr. Camper did not have copies of these letters with him at the hearing and neither I nor Deputy Attorney General Cocchiola received the copies he had sent. Therefore, I gave Mr. Camper the opportunity after the hearing to again send these letters to the undersigned and to Deputy Attorney General Cocchiola, and Ms. Cocchiola was given one week after receipt of these letters to submit any written comments. I received the letters (R-1 through R-5) from Mr. Camper on May 17, 1984, and did not receive anything from Ms. Cocchiola within the one-week period. The record in this matter initially closed on May 24, 1984.

After reviewing the testimony and exhibits, there appeared to be a possible factual dispute as to Mr. Camper's prior employment. In the letter Mr. Camper submitted from Brian D. Peterson, a restaurant manager employed by Harrah's Marina Hotel and Casino, dated March 13, 1984, Mr. Peterson stated that he has known Mr. Camper for nine years and that the respondent "has worked under my supervision for two (2) years . . ." (R-3). During his testimony, Mr. Camper stated that before he obtained his recent position with Harrah's Trump Hotel and Casino, he had been unemployed for a period of approximately two years because he was unable to find a job. Since the letter from Mr. Peterson implied that Mr. Camper had been employed for the two-year period prior to the hearing and since the credibility of Mr. Camper is an important factor in this matter, I notified the parties by letter, dated July 3, 1984, that I was reopening the record in order to give Mr. Camper and Ms. Cocchiola an opportunity to clarify when the respondent worked under the supervision of Mr. Peterson. I requested that the parties provide this information by July 20, 1984.

On July 18, 1984, I received a letter from Ms. Cocchiola stating that a work status check performed by the Division indicated that Mr. Camper has worked for Harrah's Trump Hotel and Casino since May 14, 1984, that there was no record of his being employed by any casino between October 1982 and May 14, 1984, that from

November 1981 through October 29, 1982, Mr. Camper was employed by Tropicana Hotel and Casino, and that prior thereto and until October 15, 1981, the respondent was employed as a pastry person by Harrah's Marina Hotel and Casino. I did not receive a response from Mr. Camper until July 31, 1984, and on that day I received an unsigned letter from Mr. Peterson on the stationery of Harrah's Marina Hotel and Casino indicating that Mr. Camper had worked for him from November 12, 1980 through October 13, 1981. A copy of this letter was sent to Ms. Cocchiola and she requested an opportunity to respond. On August 9, 1984, I received a letter from Ms. Cocchiola in which she noted that while the second letter from Mr. Peterson clarified the question of the respondent's employment, it was addressed to "To Whom it May Concern" and was unsigned and that this should have a bearing on the amount of consideration given to the letter. The record in this matter closed on August 9, 1984.

Based on the testimony and exhibits presented, I **FIND** that the undisputed facts are:

(1) While the respondent was living with Jaimee Sampson, he purchased a car and had the car registered in Ms. Sampson's name. Mr. Camper paid the $1,500 down payment and he was making the monthly installment payments as well as paying for the car insurance. The respondent had the car registered in the name of Ms. Sampson because his previous car had been repossessed and he was unable to qualify for another installment payment agreement.

(2) At the time he purchased the vehicle, Mr. Camper told Ms. Sampson that he was not giving her the car as a present and he told her the reason why he was putting the car in her name.

(3) Sometime thereafter, Mr. Camper and Ms. Sampson broke up and Mr. Camper took the vehicle. Ms. Sampson filed a criminal complaint on April 13, 1982, and accused Mr. Camper of illegally taking her vehicle (P-4). The respondent was arrested on April 13, 1982, for the unlawful taking of the vehicle, a violation of N.J.S.A. 2C:20-10. This charge was dropped when Mr. Camper gave Ms. Sampson the car.

(4) Thereafter, Ms. Sampson gave the car back to the respondent because she could not afford the monthly installment payments or the insurance payments. Later, she again demanded that Mr. Camper return the vehicle and the respondent gave her the car.

(5) Mr. Camper was upset by Ms. Sampson's actions and on October 15, 1982, he set the vehicle on fire. Mr. Camper was arrested for purposely destroying the vehicle (P-1).

(6) Mr. Camper was indicted and was charged with arson, a violation of N.J.S.A. 2C:17-1a(2), and criminal mischief, a violation of N.J.S.A. 2C:17-3a(1) (P-2). On April 11, 1983, Mr. Camper pled guilty to the arson charge and the criminal mischief charge was dismissed, and on April 22, 1983, the respondent was placed on probation for a period of 18 months and was required to make restitution in the amount of $4,796 (P-3). As a condition of his probation, Mr. Camper was to actively seek employment; however, he did not have to start making restitution until he found employment (P-3).

(7) Shortly before the date of the hearing, Mr. Camper was employed as a convention server at the Harrah's Trump Plaza Casino and Hotel. Mr. Camper was unemployed for an approximate two-year period prior to obtaining this position.

(8) As of the date of the hearing, Mr. Camper was scheduled to complete his probation period in approximately three months; however, he had just started paying the amount of the restitution.

(9) At the time of the hearing, Mr. Camper was 23 years old.

(10) Karen Williams, a friend of the respondent, testified that she had allowed the person she was living with to purchase a car in her name and that when they separated, she never claimed to own the vehicle. Ms.

Williams felt that it was unfair for Ms. Sampson to claim ownership of the vehicle and for Mr. Camper to have to pay Ms. Sampson for the car. According to Ms. Williams, Mr. Camper is an honest and law-abiding person.

(11) Officer Eddie Banister in his letter stated that he has known the respondent for some time and considers him to be rehabilitated (R-1).

(12) Barbara McNeal in her letter stated that she has known the respondent for several years and that he is a gentleman and a loyal friend of her family (R-2).

(13) Brian D. Peterson in his letters stated that he has known the respondent for nine years and that Mr. Camper had worked under his supervision for a two-year period and that he found the respondent to be a good and dependable worker who was willing to learn and was conscientious about his personal hygiene and appearance (R-3).

(14) Benjamin Shaw in his letter stated that he has known Mr. Camper for about 11 years and that the only time the respondent got into trouble involved the incident regarding the car. He further stated that the respondent is helpful and truthful (R-4).

(15) Ruth Taliaferro in her letter stated that she has known the respondent his entire life and that he is a respectful and polite person and that he is rehabilitated (R-5).

Based on the facts, I **CONCLUDE** that the Division has shown that Mr. Camper was convicted of a statutory disqualifier, pursuant to the provisions of N.J.S.A. 5:12-86.

The Casino Control Act provides that a person can overcome a prohibition against licensure by affirmatively demonstrating his/her rehabilitation. N.J.S.A. 5:12-91d sets forth the following eight specific criteria to be evaluated in order to reach a determination as to rehabilitation:

(1) The nature and duties of the registrant's position;
(2) The nature and seriousness of the offenses;
(3) The circumstances under which the offense occurred;
(4) The date of the offense;
(5) The age of the registrant when the offense was committed;
(6) Whether the offense was an isolated or repeated incident;
(7) Any social conditions which may have contributed to the offense;
(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

Based on the facts, I **CONCLUDE** that Mr. Camper has established by clear and convincing evidence his rehabilitation, pursuant to N.J.S.A. 5:12-91d. Mr. Camper has almost completed his period of probation and is making the required restitution payments. Mr. Camper has had only one conviction and the circumstances which led to the arson are unique. There appears to be no reason to expect that the respondent will engage in any criminal activities in the future.

Therefore, I **ORDER** that the casino hotel employee registration of Anthony Camper not be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 6..2-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 14, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION
Principal Legal Analyst

Mailed to Parties:

SEP 20 1984
DATE

Ronald L. Parker/shb
OFFICE OF ADMINISTRATIVE LAW

bc

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:

P-1 Complaint filed against Anthony G. Camper, dated February 6, 1983 and the October 15, 1982 report

P-2 Indictment filed against Anthony G. Camper

P-3 Judgment of Conviction as to the indictment filed against Anthony G. Camper

P-4 Arrest Report regarding Anthony Camper, dated April 13, 1982, and the complaint filed against Mr. Camper by Samson

FOR THE RESPONDENT:

R-1 Letter from Officer Eddie Banister

R-2 Letter from Barbara McNeal

R-3 Letter from Brian D. Peterson, dated March 13, 1984

R-4 Letter from Benjamin Shaw

R-5 Letter from Ruth Taliaferro

WITNESSES

FOR THE RESPONDENT:

Anthony G. Camper
Karen Wilson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
LICENSE NO. 13358-21
AGENCY DOCKET NO. 82-EA-182
OAL DOCKET NO. CCC 9540-82

IN THE MATTER OF THE APPLICATION
OF MICHAEL A. CARROZZA
FOR RENEWAL OF HIS CASINO
EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 16, 1984, recommending that the application of Michael A. Carrozza for renewal of his casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of January 9, 1985, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 14th day of JANUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Michael A. Carrozza for renewal of his casino employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Michael A. Carrozza is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Michael A. Carrozza, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9540-82

AGENCY DKT. NO. 82-EA-182

MICHAEL A. CARROZZA, III,

Applicant,

v.

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,

Respondent.

Michael Patrick Mullen, Esq., for the applicant

Ralph L. Fusco, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 1, 1984 Decided: November 15, 1984

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Michael A. Carrozza, III, applicant, for renewal of his casino employee license (dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal on the basis that the applicant had failed to disclose information material to licensure and that he lacked the requisite good character, honesty and integrity, by reason of his failure to disclose information material to licensure and by reason of alleged criminal misconduct.

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PROCEDURAL HISTORY

Mr. Carrozza filed his renewal application with the Commission during May 1981. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated July 13, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on October 14, 1982, Mr. Carrozza requested a hearing. On October 19, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on February 2, 1983, and the matter was scheduled for hearing. However, at the request of the applicant, on April 12, 1983, the matter was placed on the inactive list. The matter was removed from the inactive list during November 1983, and a hearing was scheduled. Several adjournments were granted. The matter was heard on March 19, 1984, June 19, 1984 and October 1, 1984, when the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Carrozza is 23 years of age. He is a 1979 graduate of Upper Dublin High School in Pennsylvania.

During the tenth grade, the respondent started to use drugs and to consume alcoholic beverages. Ultimately, he gravitated to methamphetamine. He became dependent on methamphetamine at about 18-19 years of age.

In August 1980, the respondent was licensed as a casino employee by the Commission. He was 19 years of age. In response to an inquiry on his Personal History Disclosure Form -2, the respondent falsely stated that he had not previously used drugs. The respondent answered falsely because he believed the truth would impair his potential employment in the casino industry.

On February 22, 1981, the applicant was arrested by the Woodstown Police Department and was charged with a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance (methamphetamine). On June 18, 1981, the applicant was indicted (R-3). On October 20, 1981, the applicant was granted a conditional discharge and the proceedings were suspended for one year. On October 9, 1982, following his discharge from probation, the indictment against the applicant was dismissed (R-2). The applicant testified that during the incident he was high on drugs and was with another person in the other person's car.

In May 1981, the applicant submitted his application, dated May 14, 1981, for renewal of his casino employee license (dealer, blackjack and craps), license number 13358-21 (R-1). In response to question number 12 on the application, the applicant did not disclose his arrest of February 22, 1981, nor the charges which emanated therefrom.

Mr. Carrozza testified that as of May 1981 he was dependent upon methamphetamine. He would either inhale or inject the drug. He used methamphetamine a few times per day, and had a $200 per week habit. Also, his use of the drug caused him to behave unpredictably and he did not care about anything.

As of May 19, 1981, the applicant was employed as a dealer by Bally's Park Place Casino Hotel (Park Place). He would get high before and after work.

At this time, the applicant resided with his grandparents in the Atlantic City area. He was then dating Deborah Hamilton.

During early-1981 the applicant contracted viral hepatitis. He was treated by a Dr. Piccone of Margate; nevertheless, he still maintained his drug habit.

During mid-1981, the applicant sought assistance from the Ocean City Rescue Center, which provided counseling. However, the applicant failed several urinalysis tests.

The parties agreed to a stipulation that on December 16, 1982, Detective Michael Penyak, assigned to the Division as an investigator, contacted the applicant by telephone regarding his renewal application. When questioned by the detective regarding his criminal record history, the applicant did not disclose his arrest of February 22, 1981.

Further, the applicant only admitted the incident upon being confronted with the details thereof. The applicant did not disclose his arrest because he was afraid he would lose his job.

On December 29, 1981, the applicant was arrested and was charged with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance (methamphetamine), and of N.J.S.A. 24:21-20a(4), possession of marijuana over 25 grams. On January 26, 1982, the applicant was indicted by an Atlantic County Grand Jury for an alleged violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance (methamphetamine) (R-4). On April 21, 1982, the applicant pled guilty to the indictment. On May 7, 1982, the applicant was sentenced to probation for a period of one year and was fined $250 and $25 to be paid to the Violent Crimes Compensation Board. The applicant's probation was transferred to Pennsylvania and was completed satisfactorily. Mr. Carrozza testified that he was high at the time of his arrest.

For a 28-day period during January and February 1982, the applicant was a patient at the White Deer Run clinic in Pennsylvania. He received counseling for his drug dependency. He has passed several urinalysis tests since his release from the facility. The cost of the clinic was paid for by the applicant's medical coverage from Park Place.

The applicant took a voluntary leave of absence from Park Place to attend the clinic. Although he was welcome to return to employment at Park Place, the applicant choose not to return. The applicant choose not to return to the casino industry because of the prevalence of drugs.

The applicant has resided with his parents for the past two years. He has been drug free since February 1982. The applicant testified that his drug-free condition was a matter of choice.

The applicant was employed as a cook by Fiddlestick's Restaurant in Hatboro, Pennsylvania, for a period of seven months (R-6). This employment was satisfactory in all respects.

Since July 5, 1983, the applicant has been employed as a toll collector by the Pennsylvania Turnpike Commission at its Fort Washington exit. The applicant's performance has been satisfactory. In response to questions on his application for

employment with the Pennsylvania Turnpike Commission, the applicant did not respond, either positively or negatively, to an inquiry regarding his criminal record history (P-1). The applicant testified that he did not lie, but that his lack of a response was intended to enhance his chances for employment.

Following his release from White Deer Run, the applicant became engaged to Deborah Hamilton. A September 8, 1984 wedding date was planned.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute was the mental capacity of the applicant at the time he completed his renewal application, whether the applicant is currently drug free and the good character, honesty and integrity of the applicant.

Mr. Carrozza testified that at the time he completed his renewal application, his drug dependency was severe and had a substantial impact upon him to the extent that he did not care how he answered the questions. Further, at that time he still suffered the effects of viral hepatitis. As a result, he often did things he did not otherwise do, such as sleep for full days. The net effect of these factors was that his ability to reason was impaired. Nevertheless, the applicant testified that the information placed on the form was correct to the extent stated, and that he was concerned about losing his job by reason of his prior arrest. The applicant's father, mother and fiance all testified that during May 1981 they were not certain that the applicant was capable of using good judgment and that his behavior was erratic and unpredictable.

Although I believe that the applicant's testimony was truthful, his statements that his ability to reason was impaired and that he was concerned about losing his job at the time he completed the application are mutually inconsistent. The applicant stated that he knowingly did not disclose his drug use on his original application for licensure and did not disclose his criminal record history on his application for employment with the Pennsylvania Turnpike Commission, a time when he was drug free. Further, Ms. Hamilton testified that the applicant did not get high in front of her during early 1981. Therefore, I am persuaded to believe that the applicant knowingly refused to disclose his criminal

record history. This finding is suported by the fact that the applicant, in December 1981 when he was still drug dependent, knowingly refused to disclose his criminal record history to a Division investigator for the sole purpose of protecting his employment status.

After consideration of the entire record in this matter, I further **FIND** that:

1. During May 1981, the applicant's ability to reason may have been impaired somewhat as a result of his drug dependency and the effects of viral hepatitis.

2. The applicant's failure to disclose his criminal record history on his renewal application and in response to an inquiry from a Division investigator was the result of a conscious decision on his part not to disclose in an attempt to preserve his employment status. The nondisclosures were not the result of any potential impaired ability to reason.

The applicant testified that he has been drug free since February 1982 and has passed several urinalysis tests since that date. The applicant's father, mother and fiance also attested to his drug-free status, which was supported by positive personality changes which occurred since his release from White Deer Run. This testimony was persuasive and uncontradicted.

I further **FIND** that:

3. The applicant has been drug free since February 1982.

The applicant produced his father, mother and fiance to testify to his good character, honesty and integrity. In addition, the applicant produced a letter from his employer at Fiddlestick's Restaurant (R-6). This testimony was persuasive and uncontradicted.

I further **FIND** that:

4. The applicant's parents, fiance and an employer believe the applicant to be a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86b

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

> So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License 78-EA-8 (Jan. 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission

(June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

There is no dispute that the applicant understood fully his obligation to disclose his criminal record history on his renewal application. He understood his obligation to answer truthfully questions on his original application, as well as his obligation to answer truthfully questions posed by the Division investigator in December 1981. Further, there is no doubt that the applicant knew that he should disclose his arrest on February 22, 1981, and the charges resulting therefrom in response to question number 12 on the renewal application; nevertheless, he did not. The applicant's explanations of the reasons for his failure to disclose were mutually inconsistent and not persuasive. Accordingly, there is no reason to believe that the applicant's failure to disclose was due to ignorance, inadvertence or was a good faith error. Therefore, the failure to disclose must serve to disqualify the applicant from renewal of his license. Further, in the event the applicant's ability to reason was impaired by reason of his drug use, such does not constitute a good faith reason for overlooking the nondisclosure. Even though the applicant may have been dependent on drugs, he took them voluntarily.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant is disqualified from renewal of his license by operation of N.J.S.A. 5:12-86b in regard to his failure to disclose his criminal record history on his renewal application.

The applicant cited Marino v. Division of Gaming Enforcement, 2 N.J.A.R. 176 (Casino Control Commission 1980) and Woodard v. Division of Gaming Enforcement, 2 N.J.A.R. 231 (Casino Control Commission 1980) in support of his argument. These cases are concerned with purposeful as opposed to ignorant or inadvertent nondisclosures. Since the applicant's nondisclosures were found to be knowing and purposeful and since the factual scenario is not similar to those in the cited cases, the argument is unpersuasive. In fact, the Commissioner's final decisions support the conclusion reached herein.

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h; N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

Mr. Carrozza established some of the criteria by which to demonstrate his rehabilitation. There has been a passage of time since his most recent offense, he has completed satisfactorily his probation, he is rehabilitated from his drug use and he has maintained steady employment. Nevertheless, an applicant cannot rehabilitate him or herself under section 90h from a section 86b disqualifier.

I **CONCLUDE** that the applicant has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Carrozza was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). William Gonzales, supra at 8. Therefore, the conclusion that Mr. Carrozza failed to disclose his criminal record history in violation of section 86b automatically precludes him from meeting his burden under section 89b(2) of the Act. Further, an applicant's willingness to disclose fully his criminal record history is the most direct and reliable means of testing his or her good character, honesty and integrity. Nevertheless, it is the easiest test for an applicant to meet if he or she does, in fact, possess good character, honesty and integrity.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Michael A. Carrozza, III, for renewal of his casino employee license (dealer) be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 15, 1984
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 20 1984
DATE

Ronald L. Parker/jkb
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Pennsylvania Turnpike Commission - Application for Employment, Michael A. Carrozza, June 4, 1983 (4 pages)

R-1 Casino Control Commission - Application for Casino Key and Casino Employee License Renewal, Michael A. Carrozza III, May 14, 1981 (2 pages)

R-2 State of New Jersey, County of Salem v. Michael A. Carrozza, III, Superior Court -Law Division, Request for Removal from Conditional Discharge, January 7, 1982; and Order of Conditional Discharge, October 4, 1981 (4 pages)

R-3 The State of New Jersey v. Michael A. Carrozza, Superior Court - Law Division (Criminal), Salem County, Indictment No. I-479-80-M, June 18, 1981 (3 pages)

R-4 The State of New Jersey v. Michael Carrozza and Jeffrey Mailly, Superior Court-Law Division (Criminal), Atlantic County, Indictment No. 611-81-J-A, filed January 26, 1982; Judgment of Conviction, May 7, 1982 (5 pages)

R-6 Letter from Saul Schwarz, December 12, 1983

WITNESS LIST

FOR THE PETITIONER:

Mary Jane Carrozza

Michael A. Carrozza, Jr.

Michael A. Carrozza, III

Deborah Hamilton

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
REGISTRATION NO. 49544-40
AGENCY DOCKET NO. 84-EA-186
OAL DOCKET NO. CCC 5263-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
WILLIAM COKER,	:
Respondent.	:

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 3, 1984, recommending that the complaint of the Division of Gaming Enforcement filed against William Coker be dismissed; and no exceptions having been filed in the Initial Decision; and the Commission, after considering the entire record in these proceedings, having resolved at its public meeting of January 23, 1985, to adopt the Initial Decision and dismiss the complaint,

IT IS on this 23rd day of January 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint against the casino hotel employee registration issued to William Coker be and hereby is dismissed based upon the reasons set forth in the Initial Decision of the Office of Administrative Law, which is incorporated here and by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon William Coker and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5263-84

AGENCY DKT. NO. 84-186

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,

v.

WILLIAM COKER,
Respondent.

Anthony D'Elia, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

William Coker, respondent, pro se

Record Closed: November 5, 1984 Decided: November 30, 1984

BEFORE **JEFF S. MASIN, ALJ:**

The Division of Gaming Enforcement (Division) seeks an order from the Casino Control Commission (Commission) revoking the casino hotel employee registration of William Coker. Mr. Coker requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held on September 14, 1984, and a prehearing order was issued on September 21, 1984. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin at the Mullica Township Municipal Court on November 5, 1984.

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THE ISSUES

As identified at the prehearing, the issues concerning the Division's attempt to have Mr. Coker's employee registration revoked revolve around his convictions for several criminal offenses, some of which the Division contends are enumerated disqualifying offenses listed in Section 86(c) of the Casino Control Act, N.J.S.A. 5:12-1 et seq. In addition, the Division contends that continued registration of Mr. Coker would be inimical to the polices of the Casino Control Act and the interests of the gaming industry, thus requiring revocation of the casino hotel employee registration, pursuant to N.J.S.A. 5:12-86(d).

Mr. Coker contends that despite his past problems he has rehabilitated himself and argues that he should be permitted to continue to retain his license in accordance to the provisions of N.J.S.A. 5:12-91h.

THE EVIDENCE

William Coker testified that he was first arrested when he was 15 years old. His first adult criminal involvement was in 1978. On July 15 of that year he was arrested for selling a quantity of PCP to an undercover police officer. Coker testified that the PCP was worth about $20. He had met the undercover agent through an associate of Coker's. As a result of his arrest on these charges, he was fined $500, given a suspended sentence to Yardville and placed on five years probation.

In March 1981, Coker was charged with possession of a controlled dangerous substance and of a stolen automobile. In addition, he was charged with possession of a controlled dangerous substance with intent to distribute. He had been caught speeding and during a search the officer discovered many plastic bags containing methamphetamines. Coker claimed at the hearing that he had purchased the drugs packaged in that fashion.

On May 29, 1981, Coker was arrested by the Maple Shade police on a warrant from Brooklawn Township for a charge of theft of movable property. The arresting officers found a glassine package containing a white substance as well as a stolen gasoline credit card and several titles to motor vehicles and driver's licenses belonging to others. Coker testified that the CDS charges resulting from these arrests were dismissed because

the powder was not CDS. The respondent acknowledged that he knew that the gas credit card was indeed stolen.

On July 8, 1981, Coker was charged in Camden with possession of controlled dangerous substances. According to the respondent, he was high at the time of his arrest. Again, Coker insisted that the multiple packages of powder were in the form in which he had bought them. He did admit that he would sell drugs to his friends if theydid admit that he would sell drugs to his friends if they ran out, although he claimed that he did not sell them often.

Coker was also arrested in Berlin Borough on August 3, 1981, for receiving stolen property, possession of a burglary tool, possession of a motor vehicle master key device, and possession of a controlled dangerous substance under 25 grams.

As a result of the March 7, 1981, arrest for possession fo controlled dangerous subtances, Coker was indicted and ultimately entered a plea of guilty to possession of controlled dangerous substances and receiving stolen property, the latter being a 1974 Plymouth which had been stolen.

On January 22, 1982, Coker was sentenced to concurrent nine-month terms in the Camden County Jail upon his plea of guilty to two counts of indictment 88-81 and was also required to pay $50 to the Violent Crimes Compensation Board. On Indictment 331-81, which involved charges related to the August 3, 1981 arrests in Berlin and a August 4, 1981, arrest in Clementon, Coker entered pleas to charges of receiving stolen property and unlawful use of a credit card. He was sentenced to nine-month concurrent terms in the Camden County Jail to be served concurrently with the sentence from Indictment 88-81 (see above). He was also required to pay $100 to the Violent Crimes Compensation Board.

As a result of Coker's convictions for the 1981 indictments, he was charged with a violation of the probation which he had been serving as a result of his 1980 plea of guilty to sale of CDS. He plead guilty to the probation violation and was sentenced to three years probation, to be served concurrently with his other probationary term and he was also required to serve 90 days in the county jail to run concurrent with the nine-month sentences on the 1981 indictments. As a further condition of probation, he was required to become involved in an in-patient drug treatment program. It was as a result

of this sentence that Coker became involved in a program known as the Institute For Human Development. Coker entered this program in June 1982. He remained in the program for approximately two years. During that time, as an in-patient, he was involved in group therapy and other programs designed to change his patterns of thinking and overcome his substance abuse difficulties. According to a letter prepared by Warren Rogers, Out-Patient Unit Supervisor for the Institute (R-9 in evidence), Mr. Coker initially displayed a "lack of understanding of difference between his values and the values acceptable to our society." After intense group and individual counselling sessions during a 21-month period, Coker improved his attitudes and took such steps as enrolling in the Atlantic Community College with the intent of working towards an associates degree, making restitution payment to the probation department, changing his place of residence and avoiding undesirables. Further evidence presented during the hearing, both in the form of letters and Coker's own testimony, indicate that he became employed in the casino industry in September 1983, working at the Tropicana in the employee dining room, known as "Our Place." Letters from the manager of this facility, as well as the assistant managers who are his direct supervisors, indicate that he has been an excellent employee who was in fact nominated in October 1983 for the Tropicana's employee of the month award. Coker has also completed the hotel's Supervisory I Program and has a generally excellent reputation as an employee.

A letter from Betteanne Grant, Mr. Coker's probation officer from Burlington County, indicates that Coker's probation expired on March 22, 1983, and that he "has improved during the probationary period." John W. Smith, the Camden County Probation Officer supervising Coker wrote a letter indicating that

> Coker appears to be on his way to a successful life. At the age of twenty-five, I feel he may have learned a valuable lesson from past mistakes. . . . Finally in the opinion of this officer, Mr. Coker should continue to be a valuable asset to his community, family and employer.

Coker's Camden County probation expires in March 1985.

Frank M. Cambrone, M.A., a former behavioral therapist at the Institute For Human Development, who was directly responsible for the supervision of Mr. Coker during Coker's stay at the Institute, testified that in his opinion Coker had now recovered from his substance abuse problems. According to Cambrone, Coker stays away from negative

behavior and has always had good reports. He had no problems during his two years at the Institute and never had a positive urine. After undergoing the comprehensive program at the Institute Coker appears to have conquered his difficulties. He has been voted by the treatment staff as a model client, meaning that he has exhibited no signs of relapsing at any time.

In a letter which Cambrone wrote on September 13, 1984, he expressed the following comments:

> Since his departure from treatment, Mr. Coker and I have established a rapport which I am proud to call friendship. He has a special quality which I and other professionals in the field of behavior modification often seek to establish in ex-offenders, but rarely find. He is emotionally stable, quite mature, undertakes responsibility willingly, and carries out any responsibility efficiently and with dispatch. He gets along well with his peers and has the respect of everyone of his associates. I believe this to be of the greatest importance in his personal and community participatory growth. Also I have admired the tenacity with which he pursued his socio-economic goals.
>
> He is equiped with a logical, inquisitive mind, and deep commitment which should bring significant contributions to his employment environment. I recommend him with every confidence that he will perform at a high level.

DISCUSSION

A review of the evidence presented in this case indicates that Mr. Coker had many difficulties with the law up until 1981 and that these were generally related to his drug use. As he himself testified he and his friends stole anything that they could in order to obtain money for drugs. If Coker's story stopped in 1981 or 1982, there would be no question that he would not be an appropriate person to be licensed as a casino hotel employee. However, Mr. Coker has over the last several years exhibited the strength of character, tenacity and attitude necessary to have allowed him to apparently conquer his past difficulties. I was extremely impressed with the testimony of Mr. Cambrone, as well as the other documentation presented which indicated that Mr. Coker has successfully handled probation and, what is far more important, has taken the opportunity presented by the reference to treatment to grab hold of a last chance and successfully pull himself out of the gutter.

Having considered the evidence, I am quite impressed with the likelihood that Mr. Coker will continue to exhibit positive behavior in the future. I believe that the evidence clearly indicates that he has successfully rehabilitated himself from his past indiscretions.

I **FIND** that Mr. Coker was convicted of distribution of a controlled dangerous substance in 1980 and possession of controlled dangerous subtances and stolen property in the third degree in 1982. His convictions for distribution of CDS and possession of stolen property in the third degree constitute enumerated disqualifying offenses under N.J.S.A. 5:12-86(c) and I therefore **CONCLUDE** that subject to rehabilitation, he would be disqualified from licensure as a casino hotel employee. However, I **CONCLUDE** that, having given due care and consideration to the nature of the offenses, the length of time since their occurrence, the seriousness of the offenses and the exhibition of significant changes in his personality and approach to life since those occurrences, together with the other factors noted in N.J.S.A. 5:12-91(h), that Mr. Coker has rehabilitated himself. I therefore **CONCLUDE** that he should be permitted to continue to retain his casino hotel employee license.

The complaint against Mr. Coker is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 30, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

December 6, 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

On behalf of the petitioner:

P-1 Indictment 1558-78, with attached Judgment of Conviction

P-2 Order of Probation, dated February 9, 1982

P-3 Indictment 88-81, with attached Judgments of Conviction

P-4 Indictment 331-81, with attached Judgment of Conviction

P-5 Police Reports from the Clementon Police Department

P-6 Police Reports from the Bellmawr Police Department

P-7 Additional Investigation Report, Bellmawr Police Department, dated March 18, 1981

P-8 Maple Shade Township Uniform Arrest Report and Uniform Investigation Report, dated May 19 and May 29, 1981

P-9 Major Incident Report Prepared by Camden Police Department, dated July 8, 1981, with attached Request for Examination of Evidence, Supplementary Offense Report, Towed Vehicle Report, Laboratory Report, Letter of February 1, 1982, and Records and Identification Form

P-10 Berlin Borough Arrest dated August 3, 1981, with attached 3 page report

P-11 Haddon Township Police Reports, Major Incident Report, dated August 3, 1981, with attached Maple Shade Township Uniform Investigation Report, dated August 3, 1981

P-12 Clementon Police Department Arrest Report, dated September 8, 1981, with attached August 13, 1981 Investigation Report and August 3, 1981 Arrest Report

On behalf of respondent:

R-1 Letter of April 21, 1983, from Betteanne Grant, Probation Officer

R-2 Atlantic Community College Transcript, dated June 15, 1983

R-3 Letter of September 13, 1984, from Frank M. Cambrone, M.A.

R-4 Letter of October 14, 1983, of John Chiero

R-5 Letter of September 25, 1984, from John W. Smith, Probation Officer

R-6 Letter of September 17, 1984, from Bruce Goode

R-7 Letter of October 15, 1984, from Vera Walker

R-8 Letter of October 15, 1984, from Cyril Haynes, Assistant Cafeteria Manager

R-9 Letter of September 13, 1984, from Warren Rogers, Institute For Human Development (2 pages)

R-10 Institute For Human Development Certificate of Graduation, dated June 1, 1984

R-11 Letter of October 23, 1984, from Betty Kaminsky, Training Coordinator, Tropicana Hotel and Casino

R-12 Certificate of Completion of Supervisory I Training Program, Tropicana Hotel and Casino

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-188
LICENSE NO. 44294-21
OAL DOCKET NO. CCC 08010-84

APPLICATION OF FRED L. COREY
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE/SOLE
OWNER/OPERATOR JUNKET ENTERPRISE)

FINAL ORDER

A hearing having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and exceptions to the initial decision having been filed; and the Commission having considered the entire record of the proceedings at its public meeting of June 12, 1985,

IT IS on this 14th day of JUNE 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Fred L. Corey, the Division of Gaming Enforcement and the OAL within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

APR 26 1985

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 8010-84

AGENCY DKT. NO. 84-EA-188

FRED L. COREY,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT, STATE DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Michael R. Justin, Esq., for the petitioner

Anthony D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: March 12, 1985 Decided: April 26, 1985

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the application filed with the Casino Control Commission (Commission) by Fred L. Corey for licensure as a junket representative who is the sole owner and operator of a junket enterprise pursuant to the provisions of N.J.S.A. 5:12-102. By letter dated October 10, 1984, the Division of Gaming Enforcement (Division) objected to the petitioner's licensure because of certain questions regarding the financial stability, integrity and responsibility of the petitioner as well as his business ability and casino experience. Mr. Corey requested a hearing and the matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference took place before Administrative Law Judge Valerie H. Armstrong on December 14, 1984, and at that time the parties agreed that the issues in this matter are:

(a) Does petitioner possess the requisite reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-102b, which incorporates by reference N.J.S.A. 5:12-90b and 5:12-89b(2)?

(b) Does petitioner possess sufficient business ability and casino experience pursuant to N.J.S.A. 5:12-102b, which incorporates by reference N.J.S.A. 5:12-90b and 5:12-89b(3)?

The hearing took place before the undersigned on March 12, 1985, and the record in the matter closed on that date.

At the hearing, the Division stipulated that the only facts pertinent to the issues are those set forth in the Division's letter, dated October 10, 1984. It was also stipulated that Mr. Corey was given a temporary license on March 1, 1983, which was renewed by the Commission on February 29, 1984, and which expired on August 29, 1984.

In summary, the Division has raised three matters of concern relating to the petitioner's licensure. The first relates to Mr. Corey's business association with Angelo DiMarco and his son, Louis DiMarco, who are the owners of a travel agency, Flower City Travel, in Rochester, New York. The second relates to Mr. Corey's business relationship with Terry Weiner, who was employed at one time or the other by Atlantic Tour and Transit and V.I.P. Tours and who was a partner in CJR Enterprises. The last relates to whether Mr. Corey's wife assisted him in arranging junket trips to Atlantic City.

It was also recognized by the parties that the bases for the matters of concern were statements made by Mr. Corey to representatives of the Division (P-22, P-23).

In his written report, dated February 6, 1984, Detective Al Kormondy stated that Mr. Corey told him that he runs junket trips to Las Vegas and the Caribbean Islands through Flower City Travel and that he and his assistant, Cheryl Seifert, organize the junket trips (P-23). Also in his report Detective Kormondy stated that he advised Mr. Corey that he had to be licensed as a junket enterprise in order to have an assistant working for him (P-23).

Having reviewed the testimony and the exhibits, I **FIND** that the basic facts in this matter are not in dispute.

Mr. Corey is a resident of Tonawanda, New York, which is a suburb of Albany, New York, and for more than 25 years he has operated various businesses in the Albany area. Between 1949 and 1956, Mr. Corey operated a snack bar and then he worked for three years as a beer distributor and bar salesman. Mr. Corey operated the Clown House Restaurant from 1961 through 1966, and for two and one-half years thereafter he operated the Jolly Clown, another restaurant. For a two-year period, Mr. Corey was employed by a furniture store, and starting in 1970 he owned a liquor store. After selling the liquor store, Mr. Corey opened Corey Travel.

Mr. Corey went on a junket trip to Las Vegas approximately 25 years ago and since that time he has organized junket trips to various locations, initially as a sideline to his other businesses.

Mr. Corey met Angelo DiMarco while on a trip to Las Vegas approximately 20 years ago and over the years he has had some business dealings with Angelo DiMarco or his son, Louis DiMarco. Mr. Corey personally met Louis DiMarco while both of them were on separate trips to Caesars Boardwalk Regency Hotel Casino (Caesars) in Atlantic City. Mr. Corey has shared planes with the DiMarcos for junket trips to Las Vegas, Puerto Rico and Nassau; however, each of them had his own clients. As to long trips to places like Las Vegas and Nassau, it is not unusual for a junket organizer to share planes. In addition, on a number of occasions, Mr. Corey has placed some of his clients on junket trips to Atlantic City arranged by the DiMarcos.

Mr. Corey denied that he had any business dependency on the DiMarcos and stated that he dealt with other junket representatives in other cities in order to participate in a good trip and to fill a plane. Other than the business contacts regarding junket trips, Mr. Corey denied having any other business dealings with Angelo DiMarco or his son. Mr. Corey has never worked for either of the DiMarcos and neither of them has worked for him, and he never had any reason to check into their backgrounds. Mr. Corey stated that he never read anything in the local newspapers regarding any criminal activities by Angelo DiMarco and that he normally would not receive or read Rochester newspapers. According to Mr. Corey, he has never received any information from the Division or the Commission indicating that he should have no business dealings with the

DiMarcos or anyone else. Mr. Corey stated that until the Division objected to his licensure he had been unaware of Angelo DiMarco's alleged ties with organized crime.

Along with six other men, Angelo DiMarco was indicted in 1974 by a federal grand jury in the District Court for the Western District of New York and was charged with conspiracy and the operation of an illegal gambling business (R-5). On July 11, 1977, Mr. DiMarco pled guilty to the wilfull failure to pay special occupational taxes, a violation of 26 U.S.C. §7203 and was fined $750 (R-5). On several occasions, Angelo DiMarco's name appeared in articles relating to mob operated gambling and other criminal activities appearing in local Rochester newspapers (P-2, P-3, P-4).

As to Mr. Weiner, Mr. Corey stated that he met Mr. Weiner approximately three years ago when an Ohio travel agent suggested that he contact Mr. Weiner if he wanted to arrange for junket trips to Atlantic City. Initially, Mr. Corey thought Mr. Weiner was employed by Caesars. Mr. Corey was never given any adverse information about Mr. Weiner by either the Division or the Commission, and he stated that the first time he was aware of the indictment against Mr. Weiner was when the Division recommended the denial of his license.

In mid-1983, Mr. Weiner cancelled several of the petitioner's junket trips to Atlantic City, and Mr. Corey asked Mr. Weiner if anything could be done to prevent a certain junket trip in July 1983 from being cancelled. Mr. Weiner told him that the trip had been cancelled because Caesars had run out of budgeted money for junket trips for that month and that the trip could be reinstated if Mr. Corey was willing to pay $1,500. At the time, Mr. Corey still thought Mr. Weiner was working for Caesars and that the money would be used by Caesars to help finance the trip. Mr. Corey agreed and the trip was rescheduled.

While on the plane to Atlantic City for this junket trip, several customers paid Mr. Corey for the trip and he had the $1,500 in cash when he arrived. Claire Whetsel, who was employed by Mr. Weiner, met Mr. Corey at the Atlantic City Airport when he arrived with his group; however, she refused to take the money there. Later, she again refused to take the $1,500 when Mr. Corey offered it near the elevator at Caesars. Mr. Corey again tried to give her the money while he was standing with her at the door of the bus. Mr. Corey said that Ms. Whetsel told him that she would not accept the money there and took him to the back of the bus where she took the money. Mr. Corey thought

Ms. Whetsel's behavior was unusual; however, he did not consider the money to be a bribe and thought perhaps that she was concerned about getting a large sum of money in a public place. Mr. Corey does not know what happened to the $1,500 after he gave it to Ms. Whetsel, and he considers the payment to be a business expense.

Mr. Weiner, ten other persons and three corporations were indicted in New Jersey for certain alleged criminal activities relating to junket trips to Caesars in Atlantic City during January through September 1983 (R-6).

Currently, Mr. Corey has no contact with either of the DiMarcos or with Mr. Weiner. According to Mr. Corey, since his license expired he handles only regular tourist trips to Atlantic City, which are not junkets since there is no obligation to gamble.

As to his business relationship with his wife, Cheryl Seifert, Mr. Corey stated that both he and his wife use their home as their office and that his wife has her own travel business which does not involve junket trips. Ms. Seifert frequently answers the telephones used by both of them. Both Mr. Corey and his wife stated that she is not his employee, that she is not paid a salary as an employee and that neither of them has represented her as an employee.

Ms. Seifert has accompanied her husband on a number of junket trips and on such trips to Atlantic City she has met Angelo DiMarco and Mr. Weiner but she was not aware that either of them had been indicted prior to the Division's letter regarding her husband's licensure.

Although Ms. Seifert is licensed in New Jersey as a junket representative, she has never arranged a junket trip to Atlantic City, and she refers all telephone calls regarding junket trips to her husband. Mr. Corey and his wife also employ a part-time clerk typist, Carol Burr.

In November 1984, Ms. Seifert applied for a license as a junket representative who is the sole owner and operator of a junket enterprise. This application was submitted because she and her husband were concerned about the Division's objection to his licensure and it is their plan to have her take over the casino junket business if his license is denied. The Commission has never supplied Ms. Seifert with any information regarding the distinction among the types of licenses available to junketeers, and she has never been given any guidelines regarding the duties and responsibilities of junket representatives.

At the hearing, the petitioner presented a number of witnesses to establish his reputation for good character, honesty and integrity and to establish that newspapers of general circulation in the Rochester area are not generally available or read by residents in the Albany area.

Jerome D. Adner, an attorney practicing in the Albany area, stated that he has known Mr. Corey for approximately 17 years and considers himself to be a social friend. Mr. Adner initially met Mr. Corey when he operated a liquor store and he has booked junket trips with Mr. Corey. As to these junket trips, it was Mr. Adner's understanding that Mr. Corey operated the junket business and that his wife went along on the trips solely as a spouse. On one of these trips, Mr. Adner met Angelo DiMarco and he had no reason to question Mr. DiMarco's character. It was Mr. Adner's understanding that Mr. DiMarco was not in business with Mr. Corey but that they did sometimes share a plane. Also, on several junket trips Mr. Adner saw Mr. Weiner, whom he considered to be a helpful young man and whom he assumed worked for Caesars since he was very helpful with room arrangements and other matters at the casino. According to Mr. Adner, Mr. Corey has a reputation for being a good businessman and for being a person of good character, honesty and integrity.

James H. McPartlan testified and submitted a letter (P-21) on behalf of Mr. Corey. Mr. McPartlan has been in the restaurant business in the Buffalo area for approximately 29 years and has known Mr. Corey for about 13 years. Mr. McPartlan has booked annual Las Vegas junket trips with Mr. Corey and considers him to be a good businessman and a person of good character, honesty and integrity. Mr. McPartlan supplies food for private air charter flights and it is his usual procedure to have the pilot give him a check before he loads the food. On one occasion, the pilot did not bring a check and Mr. Corey asked Mr. McPartlan to provide the food and stated that he would guarantee payment. Thereafter, the airline declared bankruptcy and Mr. Corey paid for the food.

Charles T. Galante, a former manager of a bowling lane establishment in the Buffalo area, stated that he has known Mr. Corey since 1952, considers him to be a personal friend and has been aware of his various business activities. Mr. Galante stated that Mr. Corey has a very good reputation as a businessman and as a person of good character, honesty and integrity. On several occasions, Mr. Galante has been on junket trips arranged by Mr. Corey.

Joseph R. Vogl testified and also submitted a letter (P-14) stating that Mr. Corey has the reputation for being a person of good character and honesty. Mr. Vogl has been on a number of junket trips arranged by Mr. Corey and considers Mr. Corey to be an excellent travel agent. Mr. Vogl now works as an electrical contractor in the Buffalo area and for 24 years he was a Buffalo police officer. Mr. Vogl has no personal knowledge of any criminal activities by Angelo DiMarco. In addition, Mr. Vogl stated that he knows Mr. Corey's wife and that she was never represented to him as a business associate.

Nicholas J. Serio, through testimony and by letter (P-4), indicated that Mr. Corey is a good travel agent. Mr. Serio has booked a number of junket trips with Mr. Corey for himself and for other businessmen and has always been satisfied with the arrangements. Mr. Serio has met Mr. Corey's wife and she was always represented as his spouse and never as his employee. According to Mr. Serio, Mr. Corey has a reputation as a person of good character, honesty and integrity.

Robert A. Burr, a police officer employed by the town of Tonawanda, testified and by letter (P-1) stated that he has known Mr. Corey for approximately ten years and that Mr. Corey is a good businessman and has a reputation for being a person of good character, honesty and integrity. Mr. Burr and his wife have been on several junket trips arranged by Mr. Corey, and Mr. Burr's wife is the petitioner's part-time employee. According to Mr. Burr, Mr. Corey does not represent his wife as an employee.

The following persons submitted letters stating that Mr. Corey is a good businessman and a person of good character, honesty and integrity:

Jerome L. Hauck, President of Western New York Harness Horseman's Association, Inc. (P-2);

Mort Isenberg, President of I. Isenberg Meats, Inc. (P-3);

Franklin C. Wisbaum, an attorney with an office in Niagra Falls (P-5);

Mason J. Michael, Jr., Accounting Executive, Prudential-Bache Securities (P-6);

Gerald Gardner, manager of Alside Supply Center (P-7);

Harold B. Rice, an appraiser (P-8);

Henry Schaefer, owner of H & S Sales Company, Inc. (P-9);

Keith H. Buchholtz, of the Buchholtz Glass Company, Inc. (P-11);

E. Joseph Peperone, an attorney (P-12, P-13);

Thomas Giangreco, president of Todd's Shoe Store (P-15);

Andrew J. Dodges, a civil engineer and owner of a retail wine and liquor store (P-16);

James Barone, a shareholder of the Bi-State Bowling Corporation and a New Jersey licensed junket representative who is the owner and sole operator of a junket enterprise (P-17);

Lance Jon Tlustos, Director of Marketing, Santo Tours, Inc. (P-18);

Timothy A. Augustine, D.D.S. (P-19);

Charles E. Scholz, president of Scholz Delicatessen, Inc. (P-21).

In closing, Mr. D'Elia argued that Mr. Corey has not shown by clear and convincing evidence his reputation for good character, honesty and integrity and his business ability and casino experience. Mr. D'Elia argued that Mr. Corey's version of the circumstances under which he paid the $1,500 to Mr. Weiner are highly questionable. Also, Mr. D'Elia questioned the propriety of Mr. Corey's wife now seeking a license as a casino representative who is the sole owner and operator of a junket enterprise in order to continue her husband's business if his license application is denied as a result of this proceeding. Mr. D'Elia noted that there was a need to review carefully the qualifications of junket representatives and enterprises since their operations cannot be scrutinized by the Division because of their locations.

In closing, Mr. Justin argued that all of the objections raised by the Division were facts revealed by Mr. Corey during interviews with the Division's representatives. He stated that Mr. Corey was a candid person who did not feel he did anything wrong or had anything to hide. As to Mr. Corey's business relationship with Angelo DiMarco and Mr. Weiner, Mr. Justin stressed that Mr. Corey was not in business with either of them and that Mr. Corey had no reason to question their backgrounds. As to the payment to Mr. Weiner, Mr. Justin argued that it was a single incident and that Mr. Corey considered it to be a business expense rather than a bribe. The fact that Mr. Corey tried to give the money to Mr. Weiner's representative in public places affirmed his belief that there was nothing wrong with the payment. Mr. Justin argued that Mr. Corey has met the qualifications for licensure and if the Division is concerned regarding any continued business association with Angelo DiMarco or Mr. Weiner, he suggested that the license be conditioned upon the petitioner's severing any such association.

Having reviewed the facts, I **CONCLUDE** that Mr. Corey has established by clear and convincing evidence that he has a reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-102b, 5:12-90b and 5:12-89b(2), and that he has sufficient business ability and casino experience to qualify for licensure pursuant to N.J.S.A. 5:12-102b, 5:12-90b and 5:12-89b(3). As to Mr. Corey's business association with Angelo DiMarco, I **CONCLUDE** that there was no reason for Mr. Corey to question Mr. DiMarco's business ability and there is no reason to believe that Mr. Corey was aware of Mr. Di Marco's alleged criminal activities. As to Mr. Corey's business relationship with Mr. Weiner, although a prudent businessman would have checked with Caesars to find out what was Mr. Weiner's position and to get a verification regarding the $1,500 payment, the facts in this matter, standing alone, are insufficient to warrant the denial of licensure. From Mr. Corey's testimony, it is not unreasonable to believe that Mr. Weiner did in fact convince Mr. Corey that the $1,500 payment was a business expense rather than a bribe especially since Mr. Weiner had never asked for any other such payment and since Mr. Corey was unaware of the fact that Mr. Weiner was under investigation for alleged illegal casino activities. Lastly, as to Mr. Corey's business relationship with his wife, I do not believe that he misrepresented the fact that he intended to operate as a sole owner and operator and further I **CONCLUDE** that Ms. Seifert's limited activities did not require the petitioner to seek licensure as a junket enterprise. Pursuant to N.J.A.C. 19:49-2.3(b), a person can seek licensure as a sole owner and operator of a junket enterprise if he or she meets the following qualifications:

(1) No person other than the licensed junket representative may hold any equity interest in, or share in the profits or losses of, the junket activities of the junket enterprise; and

(2) The licensed junket representative may not employ any other junket representative.

Based on the testimony of the petitioner and his wife that they operated separate businesses and that Ms. Seifert did not participate in the organization of junket trips, I **CONCLUDE** that Mr. Corey's junket activities are consistent with the provision of N.J.A.C. 19:49-2.3(b). In addition, I **CONCLUDE** that there is nothing wrong with Ms. Seifert's seeking independent licensure so long as she complies with the law and regulations governing junket licensure and operation.

Therefore, I **ORDER** that the application of Fred L. Corey for licensure as a sole owner and operator of a junket enterprise be **APPROVED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 26, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

April 30, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 30 1985
DATE

Ronald J. Parker/pkt
OFFICE OF ADMINISTRATIVE LAW

bc/ee

EXHIBITS ADMITTED INTO EVIDENCE

FOR THE PETITIONER:

P-1 Letter from Robert A. Burr, dated March 7, 1985
P-2 Letter from Jerome L. Hauck
P-3 Letter from Mort Isenberg, dated March 7, 1985
P-4 Letter from Nicholas Serio, dated March 1, 1985
P-5 Letter from Franklin C. Wisbaum, dated March 6, 1985
P-6 Letter from Mason J. Michaels, Jr., dated March 1, 1985
P-7 Letter from Gerald Gardner, dated March 1, 1985
P-8 Letter from Harold B. Rice, dated February 23, 1985
P-9 Letter from Henry Schaefer, dated February 22, 1985
P-10 Supplier Appreciation Award issued to H & S Sales
P-11 Letter from Keith H. Buchholtz, dated February 26, 1985
P-12 Letter from E. Joseph Peperone to Fred L. Corey, dated February 28, 1985
P-13 Letter from E. Joseph Peperone to the New Jersey Casino Control Commission, dated February 28, 1985
P-14 Letter from Joseph R. Vogl, dated February 28, 1985
P-15 Letter from Thomas Giangreco, dated February 28, 1985
P-16 Letter from Andrew J. Dodges, dated March 6, 1985
P-17 Letter from James Barone, dated March 6, 1985
P-18 Letter from Lance Jon Tlustos, dated March 7, 1985
P-19 Letter from Timothy A. Augustine, D.D.S., dated March 9, 1985
P-20 Letter from Charles E. Scholz, dated March 1, 1984
P-21 Letter from James H. McPartlan, dated March 12, 1985
P-22 Sworn interview of Fred L. Corey on October 4, 1984
P-23 Part of Investigation Report prepared by Detective Al Kormondy, February 6, 1984

FOR THE RESPONDENT:

R-1 Personal History Disclosure Form-2A filed by Frederick L. Corey

R-2 Certain newspaper article apparently in the Democrat and Chronicle

R-3 Certain newspaper article appearing in the Times-Union, Rochester, New York, November 10, 1982

R-4 Newspaper articles appearing on January 23, 1975

R-5 Grand Jury Indictment, Federal District Court for Western New York, Dkt. No. CR-75-70

R-6 Grand Jury Indictment, New Jersey Superior Court, Law Division, Dkt. No. SGJ 122-84-3

WITNESSES

FOR THE PETITIONER:

James Burns
Jerome D. Adner
James H. McPartlan
Charles T. Galante
Joseph R. Vogl
Nicholas J. Serio
Robert A. Burr
Cheryl Seifert
Frederick L. Corey

FOR THE RESPONDENT:

James Burns

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-51
OAL DOCKET NO. CCC 2205-84 ON REMAND
LICENSE NO. 14653-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
STEPHEN J. COSTA,	:
Respondent.	:

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of April 3, 1985,

IT IS on this 16th day of May, 1985, ORDERED that the initial decision is modified as follows:

(1) The respondent was charged with and committed the disqualifying offense of distribution of controlled dangerous substance, contrary to N.J.S.A. 24:21-19(a)(1), rather than the offense of possession of controlled dangerous substance with intent to distribute as stated in the initial decision at 7; and

(2) That portion of the initial decision (pp. 11-12) which states that the imposition of civil penalties under sections 129 and 130 of the Act is or may be appropriate in a case such as this is rejected. Whether or not such penalties would be appropriate is an issue that need not be decided in view of the dismissal of the complaint.

IT IS FURTHER ORDERED that the complaint for revocation of the casino employee license of Stephen J. Costa is dismissed based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7568-84
(ON REMAND FROM CCC 2205-84)
AGENCY DKT. NO. 82-51

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner,
v.
STEPHEN J. COSTA,
Respondent.

Paul A. Vagianos, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Stephen J. Costa - pro se

Record Closed: January 7, 1985 Decided: February 21, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Stephen J. Costa, respondent. The Division alleged that Mr. Costa, the holder of a casino employee license, had committed a criminal act, for which the Division seeks revocation of his license, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action. The essential issues concern the respondent's role in the subject incident and his rehabilitation.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 28, 1982. By letter of the same date, the Commission advised Mr. Costa of the pending action and of his right to request a hearing. On July 7, 1982, the Commission suspended the respondent's casino employee license pending the outcome of this matter. On March 27, 1984, the Commission vacated its order of suspension and transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On June 22, 1984, an initial decision was issued in which it was determined that the respondent had abandoned his request for a hearing (OAL Dkt. No. CCC 2205-84). However, on October 4, 1984, the Commission, based upon the respondent's letter of August 23, 1984, remanded the matter to the Office of Administrative Law. The matter was retransmitted on October 9, 1984.

A prehearing conference was held on November 19, 1984. The matter was heard and the record closed on January 7, 1985.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Costa is currently 34 years of age (R-5). He is a June 1968 graduate of Arlington High School in Arlington, Massachusettes. Also, he is a May 1970 graduate of the Coin Electrical School in Boston, Massachusettes. The respondent is a licensed master electrician in Massachusettes. The respondent was honorably discharged from the United States Air Force (R-4).

At age 26, Mr. Costa relocated to Nevada. In January 1976 he graduated from the Strip Dealer School in Las Vegas, Nevada (R-5). From January 1976 through May 1980, with two minor breaks, the respondent was employed by various casinos in Nevada. He began as a busboy and untimately held the position of floorperson.

By application dated November 14, 1979, Mr. Costa sought licensure by the Commission as a casino employee (R-5). Ultimately, he was issued a casino employee license, number 14653-21. The respondent relocated to Atlantic City in May 1980.

For the two and one-half years immediately preceding April 1982, Mr. Costa had been employed by the Golden Nugget Casino Hotel (Golden Nugget) as a craps dealer. He earned an annual salary of approximately $35,000. The respondent left this employment voluntarily during the first week in April 1982.

During at least late-1981 and the first half of 1982, the respondent resided in a home he owned in McKee City, New Jersey. Also, at least during January 1982, George Smyrnios resided at the same address, where he rented a room from the respondent.

Mr. Costa was involved in an incident on January 12, 1982, which is the primary subject of in this matter. The respondent and Mr. Smyrnios were involved in an incident during which one gram of cocaine was sold for $100 to State Police Detective R. Kirvay, who was acting in an undercover capacity, in the Rangoon Lounge located on the casino floor of the Golden Nugget (P-1). During the incident, the respondent was in possession of the cocaine, which he transmitted to Mr. Smyrnios, who in turn sold the drug to Det. Kirvay.

On April 23, 1982, a complaint was filed against the respondent which charged him with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, cocaine, and of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, cocaine (P-1). The respondent was arrested on April 28, 1982. The respondent applied for admission to the Atlantic County Pre-Trial Intervention Program (PTI). A preliminary rejection report, dated September 29, 1982, initially recommended denial of admission for reasons which were not substantiated by proofs presented in this matter and have no probative value herein (P-2). However, the respondent pursued his application to PTI, and, by recommendation dated January 17, 1982, was admitted and enrolled on March 22, 1983 (R-2 and R-6). The respondent successfully participated in the program in both Atlantic County and Massachusettes, which included performing 100 hours of community work consisting of electrical work for a humane society (R-2). On October 25, 1983, the charges were dismissed (R-1). On September 9, 1984, an Order of Expungement was entered (R-2).

Other than the subject incident, the respondent has no criminal record.

On July 7, 1982, the Commission suspended the respondent's casino employee license pending the outcome of these proceedings. The Order of Suspension was vacated on March 27, 1984.

In September 1982, the respondent returned to Massachusettes. Commencing in December 1982 and for a period of approximately eight months, the respondent was employed as a tile installer by Sacco Tile Company. Thereafter, he formed his own business, All-American Construction Company, where he has been employed to the present in the electrical business.

All of the preceding evidence is undisputed and believable and is thus FOUND AS FACT.

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident of January 12, 1982 and the respondent's conduct and reputation since that date.

Mr. Costa did not dispute Det. Kirvay's recitation of the incident set forth in his investigation report (P-1). Nevertheless, the respondent gave a more detailed explanation of the circumstances underlying the incident. More specifically, the respondent had known Mr. Smyrnios, who was a credit player at the Golden Nugget, for approximately one and one-half to two years. Their relationship was casual and Mr. Smyrnios seemed acceptable to the respondent. At some time during date 1981, Mr. Smyrnios stated that he had no place to live. The respondent offered to rent a room in his house to Mr. Smyrnios. However, as of January 1982, Mr. Smyrnios owed the respondent approximately $1,200 for rent, telephone calls, food and clothing. At this time, the respondent had no knowledge of any involvement by Mr. Smyrnios in illegal drug activity. On January 12, 1982, which was the respondent's day-off, Mr. Smyrnios requested a ride into Atlantic City. The respondent acquiesced. Upon arrival in Atlantic City, Mr. Smyrnios gave the respondent a package to hold, which contained approximately one ounce of cocaine. The respondent understood that he was later to meet Mr. Smyrnios at which time Mr. Smyrnios would sell the cocaine. Mr. Smyrnios indicated that he would give the respondent the proceeds of the sale. Although the respondent did not want to be

involved in the transaction, he participated because he wanted the money, which was part of Mr. Smyrnios' debt. Ultimately, the respondent met Mr. Smyrnios and the detective in a bar in the Golden Nugget where Mr. Smyrnios sold the cocaine to the detective. Nevertheless, the respondent never received the proceeds of the sale. Approximately one week thereafter, the respondent learned from a neighbor that, unknown to the respondent, Mr. Smyrnios had been selling drugs from the respondent's house. The respondent immediately evicted Mr. Smyrnios. Also, the respondent later learned that Mr. Smyrnios has a criminal record history which includes convictions for the sale of drugs. At the time of his arrest, the respondent permitted the police to search his house without benefit of a search warrant.

Although the respondent stated that he was led by Mr. Smyrnios into the incident, he admitted his misconduct, which he attributed to the exercise of poor judgment, and accepted responsibility therefore. The respondent expressed regret for his misconduct.

The respondent also testified that as a result of the incident, he has been unable to pursue or secure employment in the casino industry. His career of choice is still within the casino industry as opposed to employment as an electrician. The respondent acknowledges that the subject incident places his career in the casino industry in serious jeopardy. However, it is his intention to attempt to rehabilitate his career. Further, the respondent stated that he has lost approximately $161,000 since the incident. More specifically, the respondent lost his house, automobile, other personal assets and his employment status in the casino industry. The respondent stated that this was a very heavy price to pay for his misconduct. Further, the respondent contended that he had no prior knowledge of the incident and would not have participated therein had he not wanted money from Mr. Smyrnios, because the risk was not worth $100. Last, the respondent stated that he would never repeat his misconduct.

Of primary concern is respondent's testimony concerning the circumstances underlying the incident. Initially, the respondent's position in this matter must be recognized. He is the holder of a casino hotel employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from my observations of the respondent's demeanor, the plausibility of his testimony, the fact that his testimony was consistent with and corroborated by the investigation report prepared by the detective (P-1) and the respondent's statements made during an intake interview for

admission into PTI (R-6), I am persuaded to believe that the respondent testified truthfully. His testimony was extremely candid, straightforward, comprehensive, consistent and believable, In the final analysis, I am persuaded to accept his testimony in all respects.

The respondent offered a letter from Lawrence J. Torrielli, Vice President of Action Bearing Company in Boston, Massachusettes. Mr. Torielli stated that he has known the respondent personally and in business for the past six years, and is of the opinion that the respondent is a hard working conscientious person and possesses high moral character (R-3).

After consideration of the entire record in this matter, I further **FIND** that:

1. The respondent's testimony of the circumstances underlying the incident was fully consistent with the narrative contained in the investigation report prepared by Det. Kirvay (R-1) and the statements made by the respondent during his intake interview for admission into PTI (R-6).

2. The entirety of the respondent's testimony was consistent with and corroborated was by all of the documentary evidence and, therefore, is believable and persuasive in all respects and is incorporated herein as though fully set forth at length.

3. The respondent is held in high esteem by a personal and business acquaintance of the past six years.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. Costa's misconduct on January 12, 1982 constitutes a violation of section 86c(3) and section 86c(4) through section 86g, and, accordingly, establishes that he no longer possesses the requisite degree of good

character, honesty and integrity required for licensure under section 89b(2) of the Act. Although the respondent acknowledged his misconduct, he contended that he maintained the requisite degree of good character, honesty and integrity by means of his rehabilitation, pursuant to section 90h of the Act.

(A) N.J.S.A. 5:12-86c(3), 86c(4), and 86g

Section 86g provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19 be disqualified from licensure. The Division alleged, under section 86c(3), that Mr. Costa's conduct during the incident of January 12, 1982, constitutes a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance, cocaine, with intent to distribute, which is a disqualifying offense.

Mr. Costa's acknowledged misconduct establishes that, although the charges were dismissed, he committed the requisite elements of the cited offense. Further, it was established that the cited offense is a disqualifier, pursuant to section 86c(3).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Mr. Costa is disqualified from licensure as a casino employee by operation of N.J.S.A. 5:12-86c(3) through section 86g.

Section 86c(4) is more commonly referred to as the "inimical clause." The Division has raised nothing other than the respondent's criminal misconduct, which establishes a violation of section 86c(3), to establish that continued licensure would be inimical to the Act. However, the inimicality of the misconduct has been established by the conclusion that the conviction is a disqualifier under section 86c(3). Therefore, section 86c(4) does not apply. There was no charge that the respondent had committed any other act which would render continued licensure to be inimical.

I **CONCLUDE** that the Division has not established that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Mr. Costa is licensed as a casino employee and, although currently not employed by a casino hotel, was employed as a dealer by the Golden Nugget. As such, he had direct responsibilities for gaming activities and had substantial contact with the patrons of the casino.

Second, the respondent committed violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, cocaine, and of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance, cocaine. The distribution charge constitutes a disqualifier under section 86c(3). The offense was very serious.

Third, the offense was committed knowingly by a license holder inside a casino facility, which enhances the seriousness of the misconduct. The fact that the respondent

wanted the proceeds of this sale as partial payment of Mr. Smyrnios' debt, does not serve to mitigate his misconduct.

Fourth, the offense occurred on January 12, 1982, approximately three years ago.

Fifth, the respondent was 31 years of age at the time of the offense. There was no indication that his misconduct was due to immaturity.

Sixth, the respondent's criminal misconduct was isolated. The respondent committed no misconduct prior to the incident, nor subsequent thereto.

Seventh, there were no social conditions which contributed to the offense.

Eighth, it is evident that the respondent has made substantial rehabilitative efforts. He has acknowledged fully and accepted responsibility for his misconduct. Further, he pursued strenuously his application and completed successfully PTI. Also, the respondent has not committed any other criminal misconduct. In addition, the respondent had a positive employment record within the casino industry prior to the offense and, the respondent has been otherwise employed continuously since December 1982. Further, the respondent has suffered severe financial consequences as a result of his misconduct. In the final analysis, I am persuaded that the respondent has a full and clear understanding of the seriousness of his misconduct and has no intention whatsoever of repeating the misconduct. Accordingly, there is every reason to believe that there is little, if any, likelihood of a repetition of such misconduct. Although the respondent cannot eliminate his past record, there is nothing more he could have done to establish his rehabilitation. However, the fact that the respondent may have established his rehabilitation does not necessarily avoid the necessity of imposing a penalty for the purpose of ensuring future compliance with the regulatory scheme.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Costa was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The burden carried by Mr. Costa was substantial by reason of the fact that the offense occurred in a licensed casino facility and was committed by a licensed casino employee. Were this hearing conducted immediately following the incident, there is no question that the respondent could not have established his rehabilitation and good character, honesty and integrity. However, and given the fact that the respondent has affirmatively demonstrated his rehabilitation, I am persuaded to believe that there is little likelihood that future misconduct will occur and that the respondent presents no risk to the public or to the integrity of casino gaming in this state. An examination of the "whole man" clearly and convincingly establishes that Mr. Costa is a person of good character, honesty and integrity and is entirely suitable for continued licensure in this state. Boardwalk Regency Corporation, supra at 51, 52.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2) of the Act.

(D) PENALTY

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activities;

e. To prevent future misconduct of a like nature from recurring.

The Division sought revocation of the respondent's casino employee license.

The respondent's conduct constituted a clear violation of the Act as well as a violation of the criminal laws. This offense, as does any violation of the regulatory scheme, constitutes a potential threat to the integrity of licensed gaming and cannot be permitted to pass unchecked. Further, the offense was serious in nature. Nevertheless, the misconduct is not irreparable.

With the exception of the subject incident, the respondent's employment history in the casino industry is most positive. In addition, I am persuaded that there is little likelihood, if any, that the misconduct would be repeated.

Ordinarily, in order to ensure that the respondent recognizes his misconduct and that he will not repeat it in the future, and in order to maintain "the public confidence and trust in the efficacy and integrity of the regulatory process," N.J.S.A. 5:12-1b(6), the imposition of a penalty would be warranted. However, by reason of the serious financial hardships endured by the respondent as a direct result of his misconduct, and the concurrent loss of employability within the casino industry, no further penalty is necessary.

I **CONCLUDE** that no penalty should be imposed against the respondent, pursuant to N.J.S.A. 5:12-130.

DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino hotel employee license of Stephen J. Costa be **DENIED** and **DISMISSED WITH PREJUDICE.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 21, 1985
DATE

Richard L. Voliva jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

February 22 1985
DATE

Mary Ann Barzyk
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 26 1985
DATE

Ronald L. Parker/ph
OFFICE OF ADMINISTRATIVE LAW

bc

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 New Jersey State Police - Investigation Report, prepared by Detective R. Kirvay, January 21, 1982; Laboratory Report; Request for Examination of Evidence; and The State of New Jersey v. Stephen J. Costa, Complaint, April 23, 1982 (7 pages)

P-2 Letter to Stephen Joseph Costa from David J. Gruber, Assistant Coordinator, Pre-Trial Intervention Program, September 29, 1982 (2 pages)

R-1 Letter to Stephen Costa from Stephen J. Imperiale, PTI Coordinator, October 25, 1983

R-2 Letter from Daria A. Christie, Case Supervisor, December 7, 1984

R-3 Letter from Lawrence J. Torrielli, January 1985

R-4 United States Air Force-Honorable Discharge (DD Form 214), February 28, 1969

R-5 Personal History Disclosure Form - 2, Stephen Joseph Costa, November 14, 1979 (28 pages)

R-6 PTI Summary, Stephen Joseph Costa, November 1982 (3 pages)

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Stephen J. Costa

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-98
OAL DOCKET NO. CCC 4494-84
APPLICATION NO. 51577-21

APPLICATION OF JOHN F. CROFT :
FOR A CASINO EMPLOYEE LICENSE :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and both parties having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of January 16, 1985,

IT IS on this 14th day of May 1985, ORDERED that the initial decision is affirmed and adopted;

IT IS FURTHER ORDERED that the application of John F. Croft is denied based upon the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof;

IT IS FURTHER ORDERED that John F. Croft be and hereby is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8;

IT IS FURTHER ORDERED that copies of this final order be served upon the applicant, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4494-84
AGENCY DKT. NO. 84-EA-98

JOHN F. CROFT,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Joseph Sayegh, Esq., for petitioner (Goldenberg, Mackler and Sayegh, attorneys)

Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: Decided: November 30, 1984

BEFORE **JEFF S. MASIN,** ALJ:

John F. Croft applied to the Casino Control Commission (Commission) for licensure as a casino employee with a position designation as craps dealer. The Division of Gaming Enforcement (Division) opposes licensure. The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 9, 1984, and a prehearing order was issued on August 17, 1984. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor Municipal Court on October 19, 1984.

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THE ISSUES

As outlined in the prehearing order, the issues with respect to Mr. Croft's pending application are whether he failed to disclose relevant information material to licensure, a violation of N.J.S.A. 5:12-86(b), and whether he possesses the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)(2). The specific incident which gives rise to the questions concerning Mr. Croft was a February 18, 1978 arrest in Washington Township, New Jersey. The Division claims that Croft failed to disclose this arrest on his personal history disclosure form (PHDF) and that the circumstances involved in the incident itself reflect negatively against Croft's character.

THE EVIDENCE

Mr. Croft's arrest on February 18, 1978 in Washington Township, New Jersey is not in dispute. The police investigation reports concerning that incident were placed in evidence by the Division, which also produced some short testimony from Patrolman Charles Price, the arresting officer. The arrest resulted from a motor vehicle stop and a search of Croft, which uncovered a small amount of controlled dangerous substances (CDS) which, upon laboratory analysis, were confirmed to be Phentermine, a controlled dangerous substance.

At the time that he was arrested, Croft gave his birthdate as December 31, 1959. In fact, as he testified at the hearing, he had been born on July 12, 1960. He gave false information to the police concerning his birth date because he wanted them to believe he was 18 years old rather than 17. He was attempting to avoid the police calling his parents and advising them of the arrest and requesting them to pick Croft up from the police station. Mr. Croft testified that at the time of the arrest he was so concerned about his parents not finding out about it that "nothing else mattered." He also provided the name of a false employer as part of his attempt to avoid discovery of his arrest by his parents. At the time of his arrest Croft was having trouble in school and problems with his parents. He never heard anything further about the incident. He never disclosed the arrest to his parents or his sister or to his future wife.

Mr. Croft testified that he filled out his personal history disclosure form on January 13, 1984. He had begun gaming school a few days before filling out the

application and filled it out at the school. He was well aware that he had been arrested and did not wish to put it on the application since he had never told his wife about the incident. He was aware that he had been a juvenile at the time of the arrest and despite his having read and understood the paragraphs contained in question 16 of the PHDF which indicated that he was to list arrests for juvenile offenses, he disregarded that language and did not put down any information about the arrest, answering the question "Does not apply." At the time he filled out the application someone at the school told him not to worry about juvenile matters because what counted was what occurred after he was 18 years old.

On March 29, 1984, at 11:15 a.m., Trooper Frank Pfrommer of the New Jersey State Police, assigned to the Division, interviewed Mr. Croft by telephone in connection with a review of his application. Pfrommer testified that he was aware of Croft's 1978 arrest at the time of the phone call and also knew that the arrest had not been disclosed on the PHDF. When Pfrommer called he explained that he was calling in relation to an update and review of the application. The Officer read question 16 in its entirety to Croft as he went through the various portions of the application. In reading this question, Pfrommer read the instructions and definitions and the question. Croft answered that he had never been arrested. Pfrommer confronted him with the fact that he knew of his arrest and had reports containing Croft's name and social security number. Croft insisted that he had not been arrested even after being told some of the details of the incident and Croft indicated that he did not know where Washington Township was. Pfrommer explained that in order to investigate this matter the application would have to be held up for some months, possibly for up to a year. Pfrommer explained that if the arrest had been disclosed truthfully "or even if he had just told me after I read him the question when I was talking to him on the telephone," the matter would be concluded quickly. Croft admitted that he had indeed been arrested. Pfrommer, who was testifying from his official report which contained a general indication of the nature of the conversation between he and Croft, recalled that when he asked Croft why he had not disclosed the arrest, the applicant responded:

> "that he thought it would interfere with him getting a license and that he thought that everything has been, since he had not heard from either the police department or the court, he feels that everything was taken care of within the court system.

Mr. Croft testified that when he spoke to Trooper Pfrommer on the telephone, Croft's wife, Cheryl, was present in the room. At that moment she did not know that the

incident had ever occurred. Croft initially denied that he had been arrested. Croft recalled that the first time he was asked he said, "No," but then after details were given to him by Pfrommer, he said, "yes."

Mr. Croft admitted that he realized that he should have disclosed his arrest and stated that he had been looking for the easy way out of the dilemma caused by his having never told anyone about the arrest. He understood at the time that he did not list the arrest that he might not be licensed because of his failure to list it, but he didn't list it anyway. He further knew that he must pay the consequences for this action. He claimed that he did not think that if he disclosed the arrest he might not be licensed. He also stated that he didn't think he could put down on the application that he didn't know what had happened to the charges.

Cheryl Croft, who married Mr. Croft on May 22, 1982, and had known him for about two years before their marriage, testified that she was unaware of the arrest until the moment when Croft was engaged in a telephone conversation with Trooper Pfrommer. During the two years that Mrs. Croft knew her husband before they were married, she noticed that he matured considerably and she described him as being respectful, honest and intelligent. He has helped her through many difficulties and has always been quite dependable. Mrs. Croft is now unemployed, although she has training as a nurses aid. The Crofts live in Sea Isle City, having moved there from Pennsylvania last May. Mr. Croft is employed by an exterminating company as a pest control technician. Prior to coming to Sea Isle City, Mr. Croft was unemployed for some time after having been laid off from various jobs. His specific reason for coming to Sea Isle City was to be in the vicinity of the casino industry in the hopes of starting a new future with emploment in the industry.

Constance Croft, the sister of the applicant, testified that Mr. Croft had his problems while growing up, but she has noticed a big change in him over the last few years. She described, with some strong feeling, Mr. and Mrs. Croft's longing for a new start in life. Miss Croft is employed as a legal secretary in Philadelphia.

In addition to the testimony presented, Mr. Croft presented character references from a number of persons. Among these were a former employer, Ernest Fischer of Sykes Brothers, Inc. who noted that he had "found John Croft to be a dependable worker . . . prompt, . . . good attitude and his work was always satisfactory." Another significant references were from Sister M. Nicolette, Administrator of Little

Flower Manor in Darby, Pennsylvania. She noted that she has known Croft for several years and "found him to be alway trustworthy, dependable and show good judgment." Additional recommendations of Croft's dependability and trustworthiness came from Karen L. Hartley and David M. Gartside. There is no evidence that any of these individuals were aware that Mr. Croft withheld information about his arrest from the Commission and Division. However, Mr. Gartside at least appears to have been familiar with Mr. Croft's 1978 incident and to have found Croft "truly remorseful for the indiscretions he committed when he was considerably younger and less mature."

DISCUSSION

Cases of this nature always raise problems for those who are called upon to decide them. I found Mr. Croft to be a sincere, earnest young man who truly desires to better his life through the economic opportunities offered by employment in the casino industry. I have no doubt that his indiscretion of 1978 will not be repeated and that he is sincerely sorry for what occurred at that time. His explaination as to why he gave a false birth date to the police at that time is understandable given the difficulties he apparently was having with his parents at the time and his strong and understandable desire to avoid his parents learning of his arrest. If the only incident that were raised as a mark against Mr. Croft were the 1978 arrest, I would have no doubt that he would be deserving of licensure at this time.

Obviously, Mr. Croft's real difficulty is his failure to disclose the arrest to the Commission. I **FIND** that he did not advise the Commission of the arrest either in answer to the written question in the personal history disclosure form or in the initial conversations with Trooper Pfrommer on the telephone. Again, Mr. Croft's reluctance to answer Pfrommer's question in front of his wife in a way that would disclose to her that he had been arrested some years before and had never told her about the incident is understandable, although not excusable. Perhaps if Croft had merely told Pfrommer that he could not talk at the moment and had spoken to Pfrommer in private at a later time, Croft might have been willing to immediately advise of the arrest without first denying it. For whatever reason, he did not choose this avenue, but instead attempted to perpetuate his avoidance of the truth by again withholding information from the Division. His subsequent agreement with Pfrommer concerning the arrest does little to vitiate the detrimental effects of his persistent attempts at evasion of the truth.

The licensing scheme enacted by the Legislature in connection with the casino industry is founded upon the conception that those who are to have some role in the industry must be carefully scrutinized and that their honesty and integrity must be above reproach. The entire foundation of the regulatory scheme is based on the veracity of those involved in the industry. Where one attempts to gain entrance into the industry through deception, evasion and deceipt, one can hardly expect to be greeted with open arms.

One can feel sorry for Mr. Croft because of the dilemma which he faced and the serious consequences to his hopes and dreams which his actions have caused. However, as is so often the case, one deception leads to the necessity for others. Had Croft faced the realities in 1978, his present problems would never have occurred. Although one understands the workings of an immature mind in 1978, one cannot excuse the subsequent actions of a presumably more mature individual in 1984.

Based on the evidence presented, I **FIND** that Mr. Croft failed to disclose information which was material to licensure in connection with his application. I **FIND** that he knowingly and with the express intention of avoiding detection withheld the matter from the regulatory agencies. Although his motivations may have arisen from a desire to avoid difficulties with his wife and family, it is quite obvious that he was fully aware of the fact that he was required to disclose this arrest and that he was acting in avoidance of his responsibilities.

I **CONCLUDE** that the petitioner's application for licensure must be denied in accordance with N.J.S.A. 5:12-86(b). It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 30, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 07 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of July 12, 1984, from Anna Marie Young, D.O., with attached drug screen report

P-2 Letter of September 20, 1984, from Dr. Young, with attached drug screen report

P-3 Letter of October 17, 1984, from David M. Gartside

P-4 Letter of August 4, 1984, from Karen L. Hartley

P-5 Letter of July 6, 1984, from Sister M. Nicolette, N.H.A.

P-6 Letter of July 27, 1984, from John F. Hennessy

P-7 Undated letter from Ernest Fischer

For the Respondent:

R-1 Personal History Disclosure Form

R-2 Washington Township Police Department Investigation Report, Laboratory Report, Request for Examination of Evidence, Property Receipt and Disposition Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-113
APPLICATION NO. 47092-22
REGISTRATION NO. 47638-40
OAL DOCKET NO. CCC 324-85

APPLICATION OF ARTHUR DeJOSEPH

FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge having been filed with the Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of June 19, 1985,

IT IS on this 26th day of JUNE 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Arthur DeJoseph is denied substantially for the reasons stated in the initial decision, which is incorporated here by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Arthur DeJoseph is prohibited from reapplying for or obtaining any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Mr. DeJoseph from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Arthur DeJoseph, the Division of Gaming Enforcement, the OAL and all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 0324-85
AGENCY DKT. NO. 84-EA-113

ARTHUR DE JOSEPH,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Arthur DeJoseph, pro se

Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: March 28, 1985 Decided: May 7, 1985

BEFORE **JEFF S. MASIN**, ALJ:

Arthur DeJoseph seeks licensure by the Casino Control Commission as a casino hotel employee (alcoholic beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division) objected to Mr. DeJoseph's licensure and when he requested a hearing on the proposed action the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Honorable Richard L. Voliva, Jr. on February 19, 1985 and a Prehearing Order was issued by Judge Voliva on March 7. A hearing was held before Administrative Law Judge Jeff S. Masin at the Longport Municipal Court on March 28, 1985.

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The basis for the Division's objection to Mr. DeJoseph's request for a license arises from his arrest on March 20, 1982 by the Philadelphia Police Department on charges of knowing and intentional possession of a controlled dangerous substance and knowing and intentional possession of a controlled dangerous substance with intent to deliver. Mr. DeJoseph pled nolo contendere to the charge of possession with intent to deliver on June 16, 1982 and was sentenced to three years' probation, pursuant to Section 17 of the Pennsylvania Drug Act. His probation required that he report for one year and the remaining two years were non-reporting. The probation was transferred to Camden County.

Because of the above conviction the Division contends that Mr. DeJoseph cannot meet the requirements for licensure. Specifically, the Division asserts that his conviction constitutes a statutory disqualifier in that it is equivalent to a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. Despite the fact that the charges against Mr. DeJoseph in Pennsylvania have been dismissed pursuant to the Section 17 program, which is a diversionary program for first time offenders similar to the conditional discharge procedure under N.J.S.A. 24:21-27, the Division argues that it can prove Mr. DeJoseph's guilt under Section 86g of the Casino Control Act and that the facts establish that his actions would constitute the statutory disqualifying offense in New Jersey.

In support of its position, the Division presented at the hearing the testimony of Detective Joseph Popowicz of the South Detective Division of the City of Philadelphia. Popowicz, who has been a police officer since 1968 and is presently a firearms investigator, was assigned to criminal investigations in 1982. On March 20, 1982, while off duty, Popowicz was leaving a restaurant and club located a 20th and Oregon Avenue at 2:30 a.m. when, while going to his car in the parking lot, he was addressed by Mr. DeJoseph who asked him "how you doing". Some chit-cat occurred and then DeJoseph offered to sell Popowicz quaaludes. Popowicz asked how much they would cost and DeJoseph replied "half a hundred." At this point Popowicz produced some money and DeJoseph took out a clear plastic bag. Popowicz seized the bag from DeJoseph and placed him under arrest. He was taken to police headquarters.

Detective Popowicz advised that while in the restaurant he had had one or two drinks.

Agent Yolette C. Ross of the Division of Gaming Enforcement testified that on September 17, 1984 she had spoke with Mr. DeJoseph on the telephone concerning his application for licensure. He admitted his arrest, which had previously been disclosed on his Personal History Disclosure Form (PHDF). When asked for an explanation of the incident he indicated that he was sitting inside of his car in the parking lot at 20th and Oregon when he was approached by the police officer who ordered him out of his car. A search ensued and drugs were found. DeJoseph insisted that the drugs had not been on his person and he did not know how they got into the car. He made a comment to the affect that the girl that he was dating at the time was a romantic interest of the arresting officer.

In addition to the testimony, a Seizure Analysis Report dated March 26, 1982 was submitted as evidence. This document, which was prepared by a chemist for the Philadephia Police Department, indicates that one plastic bag containing five white scored tablets, each marked "Lemmon 714" was examined by the chemist and that two of the tablets, selected at random, were found to contain Diazepam, a controlled dangerous substance. According to Officer Popowicz, to the best of his knowledge he submitted the evidence for analysis as would be the normal practice.

Mr. DeJoseph was called to testify on behalf of the Division. He stated that he did speak to Investigator Ross and told her that the officer had come up to his car, placed a gun to his head and told him to freeze and then searched the vehicle, finding "stuff" in the glove compartment. The "stuff" consisted of a bag of pills which DeJoseph did not know were in the car and which he did not know how they had gotten there. DeJoseph denied that he knew what the pills themselves were. He had a couple of drinks during the evening.

DeJoseph indicated that at the time he was dating a young lady and he did ask the officer to let him go because of this young lady. The officer said he knew "nothing about it." DeJoseph did not recall advising Investigator Ross of any "romantic interest."

On behalf of Mr. DeJoseph, various documents were presented in evidence in support of his character. These came from such sources as a priest who has known him for over 15 years, the beverage supervisor at the Atlantis Casino Hotel where DeJoseph is employed, as well as a supervisor at that hotel, an attorney who was a teacher of his in

high school and the beverage manager at the Atlantis. Each of these speak of DeJoseph in strong terms indicating that he is dependable, honest and loyal and has integrity and good moral character.

Mr. DeJoseph testified that he is 28 years old and lives in Somerdale with his widowed mother. He supports his mother through his employment as a bar porter at the Atlantis Casino Hotel. He has been employed there for two years. His job involves helping the bartender and stocking the inventory, acting generally as an apprentice to the bartender. At the time of the incident in 1982 DeJoseph was 25 years old. Other than his employment, he is involved in a softball league. He is the owner of one third of the house in Somerdale and has resided there for seven years.

DISCUSSION

An examination of the evidence, consisting of the testimony and the documents presented, as well as a consideration of the credibility of the witnesses and the character evidence presented on behalf of the applicant indicate that Mr. DeJoseph is not currently qualified for licensure. I found Detective Popowicz' testimony to be believable, consistent and convincing. I did not find Mr. DeJoseph's version of the incident to be at all credible. He denies any knowledge of the pills, denies any knowledge of how they got into his car and denies having offered them for sale. While he makes some vague references to some possible relationship between a girl friend and a police officer these are unsubstantiated and vague at best. Given all the circumstances, I am convinced by a preponderance of the credible evidence that Mr. DeJoseph did offer for sale to the police officer on March 20, 1982 five pills, two of which were tested by the laboratory and shown to be Diazepam (the others were apparently not tested). I **FIND** that this action constitutes a series of events which would, had the incident occurred in New Jersey, be the equivalent of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, a criminal violation which is a statutory disqualifer, pursuant to N.J.S.A. 5:12-86c.

With respect to the issue of Mr. DeJoseph's good character, honesty and integrity, the evidence indicates that at least in this incident, he showed himself to be capable of attempting to distribute controlled dangerous substances, a very serious offense which speaks strongly against a finding that he has the requisite good character,

honesty and integrity which must be proven by clear and convincing evidence in order to permit licensure, pursuant to N.J.S.A. 5:12-89b(2). While otherwise Mr. DeJoseph appears to have established himself to those who know him as honest, trustworthy and of good character, this incident indicates some flaw which is quite disturbing, particularly in view of the nature of the offense.

Mr. DeJoseph has not established, pursuant to the requirements of Section 90h of the Casino Control Act, that he has rehabilitated himself from this criminal incident. While he appears to have maintained a clean record since his conviction was entered in July of 1982, his three-year probationary period will not end until July of 1985. Because of the seriousness of the charge, I do not find it appropriate to conclude at this time that DeJoseph has rehabilitated himself. However, I do believe that it is possible that he may be able to establish rehabilitation in the near future.

At this time I cannot conclude that Mr. DeJoseph has rehabilitated himself from the disqualifying affect of the March 1982 incident. Further, I cannot find by clear and convincing evidence that he has the necessary good character, honesty and integrity for licensure. However, as noted above, I believe that he may be able to qualify for licensure in the future. While I ORDER that his application be denied at this time, I suggest that he consider applying for permission to seek licensure from the Commission within a reasonable time following the conclusion of his probation. Once Mr. DeJoseph is free of the shadow of probation an assessment can be made of how he conducts himself to determine whether he has learned to function as a good, law-abiding citizen. While not binding on Mr. DeJoseph or the Division, I would suggest that at least one year beyond the end of probation would be a reasonable time at which to consider reapplying.

For the reasons expressed, I **CONCLUDE** that the application for licensure as a casino employee (alcoholic beverage employee) must be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5/7/85
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

5/9/85
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 10 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of March 7, 1985 from Rev. Martin Frigo

P-2 Letter of March 2, 1985 from Howard B. Sidewater, Beverage Supervisor, Atlantis Casino Hotel

P-3 Undated letter from Jay Koral

P-4 Letter of February 26, 1985 from James J. Quinn, Esq.

P-5 Letter of February 28, 1985 from Thomas P. Rucci, Beverage Manager, Atlantic Casino Hotel

P-6 Letter of March 5, 1985 from Samuel H. Brick, Probation Officer, Camden County

On behalf of respondent:

R-1 Seizure Analysis Report, dated March 26, 1982, with attached Complaint No. 52-1-7718, Commonwealth of Pennsylvania v. Arthur DeJoseph, and attached arrest report

R-2 Certification of Probation, dated February 26, 1985, with attached complaint no. 82-1-7718, certification of probation dated July 16, 1982, criminal transcript from Philadephia Municipal Court

R-3 Personal History Disclosure Form - 2A, received by Casino Control Commission June 7, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-24
REGISTRATION NO. 30047-40
OAL DOCKET NO. CCC 4773-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	:	
V.	:	FINAL ORDER
MARGARET M. DIGGS, Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on December 17, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of January 30, 1985, to affirm and adopt the said initial decision and to dismiss the complaint,

IT IS on this 14th day of FEBRUARY 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Margaret Diggs, the Office of Administrative Law and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4773-84

(ON REMAND FROM CCC 10062-83 and CCC 3933-83)

AGENCY DKT. NO. 82-24

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

MARGARET DIGGS,

Respondent.

Anthony V. D'Elia, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Harry A. Goldenberg, Esq., for the respondent (Goldenberg, Mackler & Sayegh, P.C., attorneys; Mark E. Roddy, Esq., at the prehearing conference)

Record Closed: October 26, 1984 Decided: December 17, 1984

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Margaret Diggs, respondent. The Division alleged that Ms. Diggs had committed a criminal act, for which it seeks revocation of her casino hotel employee registration, pursuant to Section 129 of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 20, 1982. By letter dated May 3, 1982, the Commission advised Ms. Diggs of the pending action and of her right to request a hearing. By letter filed with the Commission on February 24, 1983, the respondent requested a hearing. On May 25, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On August 15, 1983, an initial decision was issued in which it was determined that the respondent had abandoned her request for a hearing (OAL DKT. NO. CCC 3933-83). However, on December 22, 1983, the Commission remanded the matter to the Office of Administrative Law. The matter was retransmitted on December 27, 1983. Again on April 11, 1984, an initial decision was issued in which it was determined that the respondent had again abandoned her request for a hearing by reason of her nonappearance at the prehearing conference (OAL DKT. NO. CCC 10062-83). And on June 28, 1984, the Commission again remanded the matter for hearing.

A prehearing conference was held on August 10, 1984. On October 25, 1984, an order was entered which denied the respondent's motion for summary decision. The matter was heard and the record closed on October 26, 1984.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Diggs is currently 33 years of age. She is the holder of a casino hotel employee registration No. 30047-40.

On February 8, 1982, the respondent was involved in an altercation with John H. Whittington, a/k/a John Brown, which resulted in his death. More specifically, the respondent lived with her husband and her two minor children in a second-floor apartment at 229 Oriental Avenue, Atlantic City, New Jersey. Mr. Whittington lived on the third floor of the same building. At approximately 3:00 p.m. an argument between the respondent and Mr. Whittington occurred. The argument became more heated, and culminated when the respondent stabbed Mr. Whittington a single time in the chest while

both were in the hallway of the building (P-3 and P-4). The stab wound caused the death of Mr. Whittington at approximately 6:45 p.m. (P-2). At the time of the incident, the respondent was 29 years of age. She is 4 feet 9 inches tall. Mr. Whittington was 33 years of age and was 6 feet tall and muscular (P-2).

As a result of the incident, Ms. Diggs was arrested by the Atlantic City Police Department and was charged with violations of N.J.S.A. 2C:12-1b(2), aggravated assault; N.J.S.A. 2C:39-4d, possession of a weapon for an unlawful purpose; and N.J.S.A. 2C:11-3, murder. Following her arrest, the respondent admitted the act which led to Mr. Whittington's death.

On March 18, 1982, the respondent was indicted by an Atlantic County Grand Jury and charged with a violation of N.J.S.A. 2C:11-3a, murder (P-1). On March 31, 1982, the respondent pled not guilty. The respondent was tried by a jury during January and February 1983. She admitted the act; however, she asserted it was in self-defense. The respondent was acquitted of the charge.

The respondent is a cafeteria line server and has been employed by Bally's Park Place Casino Hotel (Park Place) for the past two years. She was also employed by Park Place prior to the incident; however, she was suspended pending the outcome of the criminal action. Her employment has been positive in all respects (R-1).

Other than the subject incident, the respondent has no criminal record.

The respondent's husband is currently employed as a Steward Supervisor by Park Place.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident and the circumstances underlying the taped statement given by the respondent to investigating officers (P-5).

The Division called the respondent as its witness. The respondent testified that on the date of the incident she had taken her dog to a veterinarian. Because of the condition of the dog, she was required to leave it with the veterinarian. The respondent returned home and was upset. Upon returning to her apartment, she found her husband, her brother-in-law and Mr. Whittington drinking and watching television. In 1975, Mr. Whittington had beaten up the respondent's husband. Also, Mr. Whittington had subsequently been incarcerated for stabbing another person. Further, the respondent knew Mr. Whittington to be a very nasty person when he had been drinking. Mr. Whittington began to complain to the respondent about the quality of television reception and demanded that she correct the problem. She advised him that if he was not satisfied he could return to his apartment and watch television there. An argument ensued wherein both parties swore repeatedly at each other and called each other names. More specifically, Mr. Whittington frequently called the respondent a "bitch." The respondent became very angry at the use of this word in reference to herself. Ultimately, the respondent pushed Mr. Whittington out of her doorway and tried to close the door. Mr. Whittington pushed the door back open. Finally, Mr. Whittington returned to his apartment. Thereafter, the respondent's husband and her brother-in-law left the apartment. The respondent and her son remained in the premises. Shortly thereafter, the respondent was standing in her open doorway installing a dead-bolt lock. She had tools on the floor, which included a screwdriver, pliers and a steak knife. She observed Mr. Whittington come down the stairway into the hallway area. The respondent observed a steak knife in Mr. Whittington's rear pocket. He again accosted her verbally and repeatedly called her a "b——." They exchanged verbal threats. However, the respondent was afraid of Mr. Whittington, believed that he would hurt her and knew that he could. Mr. Whittington then lunged at the respondent and punched her in the face, which broke her glasses. During the ensuing scuffle she picked up the steak knife and stabbed him once in the chest, which caused his death. The respondent then had her son call the police.

The Division also produced the statement given by the respondent to Investigator William J. McIntyre and Investigator Raymond Bolis of the Atlantic County Prosecutor's Office, Major Crime Squad, and Detective Stephen Hawkins of the Atlantic City Police Department (P-5). The statement consisted of Ms. Diggs' responding to questions posed by Investigator McIntyre. Ms. Diggs stated that upon returning home from taking her dog to a veterinarian, she found her husband, brother-in-law and John

Whittington watching television in her apartment. Mr. Whittington directed her to fix the television. She advised Mr. Whittington to go somewhere else to watch television if he didn't like it. An argument ensued wherein each called the other various names. The respondent then invited Mr. Whittington to leave her apartment and pushed him through the doorway. Later while the respondent was standing in her doorway, Mr. Whittington returned and struck her in the face, breaking her glasses. They returned to their respective apartments. However, Mr. Whittington returned immediately and the argument continued. Mr. Whittington frequently referred to the respondent as a "b——," She advised him not to call her that name or she would do something. Mr. Whittington again called her a "b——," whereupon the respondent stabbed him once in the chest with a knife. The respondent stated that she stabbed Mr. Whittington because he repeatedly called her a "b——."

Ms. Diggs also testified that she informed Det. Hawkins that she had observed a knife in Mr. Whittington's rear pants pocket at the time he returned downstairs and that she was afraid of him. Also, at the time she gave her statement to the police, she was very upset, but admitted her act and answered only the questions posed to her.

In addition, the Division called Det. Hawkins. He has been employed by the Atlantic City Police Department as a detective for the past five years. Det. Hawkins was assigned to investigate the incident. He took two statements from the respondent, the first of which was not taped. At this time, the detective believed that the central crime concerned aggravated assault with a weapon, as Mr. Whittington had not yet died. However, upon being advised of Mr. Whittington's death, the detective realized that a homicide had occurred and treated the investigation differently. More specifically, the major crime squad from the County Prosecutor's Office was contacted and participated in the investigation. It was at this time that the second and more formal statement was taken from the respondent (P-5). As indicated, the statement was taken by Inv. McIntyre. Although Inv. McIntyre was aware of the presence of a second knife, which was found in the rear pocket of Mr. Whittington's pants, no inquiries regarding the knife were posed to the respondent. Det. Hawkins testified that the respondent was calm during the taking of both statements.

The Division contended that there was an irreconcilable conflict between the statement given by the respondent to the investigating officers on the date of the incident and her testimony at the hearing. More specifically, the Division argued that Ms. Diggs'

testimony, i.e., that she observed a knife in the possession of Mr. Whittington, that she feared for her safety, and that she stabbed Mr. Whittington only after he attacked her, was not consistent with the statement given to the police and was not provided to the police on the several occasions offered during the taking of her statement and, therefore, should not be believed. On the contrary, the respondent contended that during the investigation she was upset and responded only to specific questions posed.

Upon examination, I am persuaded that the respondent's testimony and the statement she made to police investigators are not inconsistent. The respondent's testimony was more extensive and detailed than the statement she gave to Inv. McIntyre. The additional information provided in her testimony does not conflict with her statement, but for the fact that she did not include the information therein. However, the respondent testified that she had given some of the information to Det. Hawkins during her first, and unrecorded, statement. However, Det. Hawkins did not recall this information. In addition, it is important to note that the respondent's testimony, insofar as it supplemented her prior statement, was supported by other testimony. More specifically, the essence of the respondent's testimony was that she observed a knife in the possession of Mr. Whittington and feared for her safety. Det. Hawkins testified that a knife was found in the possession of Mr. Whittington. This fact is of critical importance and corroborates one of the essential elements of the respondent's testimony, as well as other essential elements thereof. In the final analysis, I am persuaded to accept the respondent's testimony in full.

The remaining issue of fact is whether the respondent acted reasonably under the circumstances. Given the fact that she had a legitimate fear of Mr. Whittington by reason of his possession of a knife and his history of violence, including criminal misconduct with a knife, the serious and threatening argument which had occurred between them immediately prior to the confrontation and the fact that Mr. Whittington, who was physically superior to the respondent, physically attacked her, is sufficient to establish that the respondent's actions were reasonable.

After consideration of the entire record in this matter, I further **FIND:**

1. The statement made by the respondent to investigating officers on the date of the incident and her testimony at the hearing in this matter are consistent.

2. The respondent's testimony regarding her observations of a steak knife in the possession of Mr. Whittington was corroborated by the testimony of Det. Hawkins.

3. On the date of the incident, the respondent returned to her apartment to find her husband, her brother-in-law and Mr. Whittington watching television and drinking alcoholic beverages.

4. The respondent was upset when she returned home.

5. An argument ensued between the respondent and Mr. Whittington regarding the respondent's television set, whereupon she invited Mr. Whittington to leave her apartment.

6. When Mr. Whittington resisted leaving the apartment, the respondent pushed him through the doorway.

7. Mr. Whittington pushed the door back open.

8. Shortly thereafter and while the respondent was installing a dead-bolt lock in her doorway, Mr. Whittington confronted her and they again exchanged verbal insults and uttered many profanities.

9. The respondent observed a steak knife in the possession of Mr. Whittington in the rear pocket of his pants.

10. The respondent knew that Mr. Whittington was violent when he was drinking, that he had beaten up her husband on an occasion in 1975 and that he had been incarcerated by reason of criminal misconduct with a knife.

11. The respondent feared for her safety.

12. The respondent's fear was reasonable.

13. Mr. Whittington attacked the respondent and punched her in the face, which broke her glasses.

14. The respondent picked up a steak knife from the floor, which she was using as a tool, and stabbed Mr. Whittington once in the chest.

15. When the respondent made her second statement to police investigators, she responded only to specific questions posed.

DISCUSSION OF LAW AND CONCLUSIONS

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. The Division alleged under Section 86c(1) that the respondent's conduct on February 8, 1982, constituted a violation of N.J.S.A. 2C:11-3a, murder. The respondent did not deny that she committed the act which led to the death of Mr. Whittington; however, she raised the defense of self-defense, pursuant to N.J.S.A. 2C:3-4. Accordingly, it is essential to determine whether the assertion of self-defense is compatible with the facts established.

N.J.S.A. 2C:3-4, use of force in self-protection, provides, in pertinent part, that:

> (a) Use of force justifiable for protection of the person.
>
> Subject to the provisions of this section and of section 2C:3-9, the use of force upon or toward another person is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

Subsection b sets forth limitations on the use of force.

There is no question that Mr. Whittington was using unlawful force against the respondent. Ms. Diggs responded to a physical attack by a person known to her to be capable of extreme violence and who was in the possession of a deadly weapon by striking him with a knife once in the chest. Further, the respondent reasonably believed that she was required to protect herself from Mr. Whittington. Although this blow proved to be fatal, it was a limited and reasonable response. It is also evident that none of the limitations set forth in Subsection b applies to the facts.

The respondent established that she acted in self-defense. Accordingly, the Division has failed to establish the offense.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, a violation of N.J.S.A. 5:12-86c(1) by means of section 86g.

DISPOSITION

It is **ORDERED** that the petition of the Division to revoke the casino hotel employee registration of Margaret Diggs be **DENIED** and **DISMISSED WITH PREJUDICE.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 17, 1984
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 19 1984
DATE

Ronald L. Parker/ph
OFFICE OF ADMINISTRATIVE LAW

ml/E

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 State of New Jersey v. Margaret Diggs, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, Indictment, filed March 18, 1982; Judgment of Acquittal, February 8, 1983 (5 pages)

P-2 Atlantic City Medical Center, Division of Laboratory--Postmortem Report, John Whittington, March 18, 1982 (2 pages)

P-3 Picture

P-4 Picture

P-5 Statement of Margaret Marie Diggs taken by Investigator William J. McIntyre, Investigator Raymond Bolis and Detective Steven Hawkins, February 8, 1982 (10 pages)

R-1 Letter from Ralph Liloia, Cafeteria Manager, October 25, 1984

WITNESS LIST

For the Petitioner:

Margaret Diggs
Stephen Hawkins

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EA-39
OAL DOCKET NOS. CCC 2411-84
(CCC 2376-83 ON REMAND)
LICENSE NO. 01088-11

APPLICATION OF JAMES E. :
DUCKSWORTH FOR RENEWAL OF HIS:
CASINO KEY EMPLOYEE LICENSE :

ORDER OF REMAND

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law (OAL) on December 3, 1984, recommending that the application of James E. Ducksworth (applicant) for renewal of his casino key employee license be granted; and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision on January 2, 1985, and the applicant having filed a reply to the exceptions on January 4, 1985; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of February 20, 1985, to remand this matter to the OAL for the second time,

IT IS on this 28th day of FEBRUARY 1985, ORDERED that this matter be and hereby is remanded to the OAL for the second time for further expansion of the record to allow thorough consideration of the issues raised in the prehearing order dated July 1, 1983, and production by the applicant of the following:

1. His 1975 and 1980 federal tax returns and any and all amended returns for those years.

2. The testimony of appropriate representatives from H&R Block regarding, but not limited to, the manner in which it determined to reimburse the applicant $826 (P2 in evidence).

The Commission leaves to the parties and the ALJ whether such testimony as may be required be adduced from a "live" witness or by affidavit, certification, deposition or other documentary means.

IT IS FURTHER ORDERED that copies of this order of remand be served upon James E. Ducksworth and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2411-84

(CCC 2376-83 ON REMAND)

AGENCY DKT. NO. 83-EA-39

JAMES E. DUCKSWORTH,

Applicant,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Gerald F. Miksis, Esq., for the applicant (Lashman, Miksis and Stilwell, attorneys)

Ralph L. Fusco, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 17, 1984 Decided: December 3, 1984

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of James E. Ducksworth, applicant, for renewal of his casino key employee license (pit boss in craps), pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal of the license on the allegation that the applicant had committed an offense regarding the filing of his federal income tax returns, which rendered licensure inimical to the Act, which established that the applicant lacked the requisite financial stability, integrity and responsibility, and which established that the

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applicant lacked the requisite good character, honesty and integrity. The applicant disputed these contentions.

PROCEDURAL HISTORY

Mr. Ducksworth filed his renewal application for 1982 with the Commission. By letter dated March 8, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 14, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on March 18, 1983, the applicant requested a hearing. On March 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Following a hearing and on December 9, 1983, an initial decision was issued in which it was concluded that the Division had not established any violation of the Casino Control Act (Act), and that the applicant had established that he possessed financial stability, integrity and responsibility, and that he was a person of good character, honesty and integrity, and it was ordered that his application be granted. However, on April 6, 1984, the Commission, upon consideration of exceptions filed by the Division, ordered that the matter be remanded to the Office of Administrative Law for expansion of the record and for consideration of additional information. On the same date, the matter was retransmitted to the Office of Administrative Law. A second prehearing conference was held on April 26, 1984. The matter was heard on July 9, 1984 and October 17, 1984, at which time the record was closed.

FINDINGS OF FACT

The Commission's Order of Remand directed that the record be expanded to include:

1. The applicant's 1975-1980 federal tax returns and any and all amended returns for those years.

2. The testimony of James Behe, the applicant's tax preparer, concerning, but not limited to, the supplying and receipt of information and figures

used to calculate the deductions on the applicant's 1979, 1980 and 1981 tax returns.

3. The testimony of appropriate representatives from H&R Block regarding, but not limited to, the manner in which it determined to reimburse the applicant $826 (P-2 in evidence).

The original initial decision, dated December 9, 1983, is attached hereto and is incorporated herein as though fully set forth at length.

The findings of fact in the original initial decision were based substantially upon Mr. Ducksworth's testimony, which consisted of a denial of any wrongdoing. Also, the decision contained a finding that the applicant's testimony was credible and persuasive. The Division took strong exception to this finding. Accordingly, the essential issue on remand is whether the Division's proofs impact upon the prior findings, specifically that the applicant's testimony was credible.

The Division offered the testimony of Mr. Behe and introduced into evidence Mr. Ducksworth's federal tax returns for 1976 (R-8), 1977 (R-9), 1978 (R-10), 1979, including the applicant's New Jersey tax return (R-11), and 1982 (R-12).

Mr. Behe testified that he is currently employed by a savings and loan association, and that he was previously employed by H&R Block. He prepared individual income tax returns for Mr. Ducksworth, as well as for many other persons. Although Mr. Behe had no specific recollection of the preparation of any of the applicant's returns, he stated that the applicant was the source of all information included in the returns. In addition, although Mr. Behe did not claim to be an expert, he did hold himself out to be a person who prepared returns and recognized that people for whom he prepared returns relied upon him for accuracy. Nevertheless, the witness conceded that errors could have been made.

In substance, Mr. Behe's testimony was of no value whatsoever. His testimony was predictable, vague and very weak. Further, he had no specific recollection of the preparation of the applicant's returns. Although the witness's testimony was moderately

inconsistent with a portion of Mr. Ducksworth's prior testimony, it was not substantial enough to impair the credibility thereof.

Nevertheless, Mr. Ducksworth's testimony must also be reexamined in light of the additional tax returns produced by the Division (R-8, R-9, R-10, R-11 and R-12). However, the Division has not contended that the information contained in these tax returns is inconsistent with the applicant's prior testimony. In fact, it appears that many of the errors contained on the applicant's original 1981 return, which were the subject of dispute at the prior hearing, existed on his prior tax returns. Therefore, the applicant's testimony that the errors on his original 1981 return were the result of an inadvertent carry-over of errors on his prior returns was supported directly by exhibits R-8, R-9, R-10 and R-11. I also note that the applicant's 1976, 1977 and 1978 tax returns were prepared by a tax preparer employed by the applicant (R-8, R-9 and R-10). Accordingly, the applicant's additional tax returns only serve to buttress his prior testimony and do not have any negative effect upon his credibility.

After consideration of the entire record in this matter, I further **FIND:**

1. The testimony of Mr. Behe was vague, weak and unpersuasive.

2. Mr. Behe's testimony did not impair the credibility of the applicant nor the believability of the applicant's prior testimony.

3. The exhibits offered by the Division did not impair the credibility of the applicant nor the believability of his prior testimony.

4. The exhibits offered by the Division enhanced the believability of the applicant's prior testimony.

DISCUSSION OF LAW AND CONCLUSIONS

The Division contended that the applicant should be disqualified from licensure pursuant to sections 86c(4), through section 86g, 89b(1) and 89b(2) of the Act by reason of the circumstances underlying the filing of his 1975 through 1981 federal income tax returns. More specifically, the Division contended that the applicant's 1981 tax return violated several sections of the Internal Revenue Code.

The original initial decision concluded that the Division had not met its burden of proof. As indicated herein, the additional proofs offered by the Division failed to establish any misconduct by the applicant. Therefore, the Division has failed to establish a violation of the federal tax laws.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the continued licensure of the applicant is inimical to the policies of the Act, pursuant to section 86c(4); and I further **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of section 86g.

The original initial decision also concluded that the applicant had established, by clear and convincing evidence, that he possessed financial stability, integrity and responsibility, as well as good character, honesty and integrity, pursuant to sections 89b(1) and (2) of the Act. The proofs presented at the remand hearing only served to buttress the applicant's qualifications. Therefore, these conclusions are readopted in full.

ORDER OF DISPOSITION

It is **ORDERED** that the application of James E. Ducksworth for renewal of his casino key employee license be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 2411-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 3, 1984
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 07 1984
DATE

Ronald L. Parker/jab
OFFICE OF ADMINISTRATIVE LAW

ml

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

J-1 U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (5 pages)

J-2 Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages)

P-1 Department of the Treasury - Internal Revenue Service Installment Agreement, James Ducksworth, July 14, 1983

P-2 Letter to James Ducksworth from Dorothy C. Ortutay, District Manager, H&R Block, December 27, 1982

R-8 U.S. Individual Income Tax Return 1976, James E. Ducksworth (5 pages)

R-9 U.S. Individual Income Tax Return 1977, James E. Ducksworth (4 pages)

R-10 U.S. Individual Income Tax Return 1978, James E. Ducksworth (4 pages)

R-11 U.S. Individual Income Tax Return 1979, and State of New Jersey Gross Income Tax Resident Return 1979, James E. Ducksworth (5 pages)

R-12 U.S. Individual Income Tax Return 1982, James Ducksworth (6 pages)

EXHIBITS NOT ADMITTED INTO EVIDENCE

R-1 Id. U.S. Individual Income Tax Return 1981, James Ducksworth (6 pages) (See J-1)

R-2 Id. Amended U.S. Individual Income Tax Return 1981, James Ducksworth (6 pages) (See J-2)

R-3 Id. Real Estate Settlement Agreement (2 pages)

R-4 Id. U.S. Individual Income Tax Return 1979, James Ducksworth (3 pages) (exhibit withdrawn)

R-5 Id. U.S. Individual Income Tax Return 1980, James E. Ducksworth (4 pages)

R-6 Id. U.S. Individual Income Tax Return 1978, James E. Ducksworth (4 pages)

R-7 Id. U.S. Individual Income Tax Return 1977, James E. Ducksworth (4 pages)

OAL DKT. NO. CCC 2411-84

WITNESS LIST

AT THE REMAND HEARING

FOR THE APPLICANT:

None

FOR THE RESPONDENT:

James W. Behe
James E. Ducksworth
Stephen French
Robert W. Latimer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EA-39
OAL DOCKET NO. CCC 2376-83
(ON REMAND)
LICENSE NO. 1088-11

APPLICATION OF JAMES E. DUCKSWORTH FOR RENEWAL OF HIS CASINO KEY EMPLOYEE LICENSE :

ORDER OF REMAND

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law (OAL) on December 9, 1983, recommending that the application of James E. Ducksworth (applicant) for renewal of his casino key employee license be granted; and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision on December 28, 1983, and the applicant having filed a reply to the exceptions on January 3, 1984; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of January 25, 1984, to remand this matter to the OAL,

IT IS on this 6th day of April 1984, ORDERED that this matter be and hereby is remanded to the OAL for further expansion of the record to allow thorough consideration of the issues raised in the prehearing order dated July 1, 1983. Without limiting the scope of the hearing on remand, the Commission desires to have the record expanded to include:

1. The applicant's 1975-1980 federal tax return and any and all amended returns for those years.

2. The testimony of James Behe, the applicant's tax preparer, concerning, but not limited to, the supplying and receipt of information and figures used to calculate the deductions on the applicant's 1979, 1980 and 1981 tax returns.

3. The testimony of appropriate representatives from H&R Block regarding, but not limited to, the manner in which it determined to reimburse the applicant $826 (P2 in evidence).

The Commission leaves to the parties and the ALJ whether such testimony as may be required be adduced from a "live" witness or by affidavit, certification, deposition or other documentary means.

IT IS FURTHER ORDERED that copies of this order of remand be served upon James E. Ducksworth and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2376-83

AGENCY DKT. NO. 83-EA-39

JAMES E. DUCKSWORTH,

Applicant

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

APPEARANCES:

Gerald F. Miksis, Esq., for the applicant (Wm. Goddard Lashman, attorney)

Ralph L. Fusco, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 25, 1983 Decided: December 9, 1983

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of James E. Ducksworth, applicant, for renewal of his casino key employee license (pit boss in craps) pursuant to N.J.S.A. 5:12-89. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed renewal of the license on the basis that the applicant had committed an offense which rendered licensure inimical to the Act, that the applicant lacked the requisite financial stability, integrity and responsibility, and that the applicant lacked the requisite good character, honesty and integrity.

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PROCEDURAL HISTORY

Mr. Ducksworth filed his renewal application for 1982 with the Commission. By letter dated March 8, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated December 14, 1982, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed on March 18, 1983, the applicant requested a hearing. On March 24, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 7, 1983, and the matter was scheduled for a hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Ducksworth is 40 years of age. He resides in Mays Landing, New Jersey. The applicant is a high school graduate and has received employment training in the casino industry. The applicant currently holds a casino key employee license.

On December 3, 1979, Mr. Ducksworth commenced employment with Bally's Park Place Casino Hotel (Park Place) as a floorperson. At this time he relocated to New Jersey from Las Vegas, Nevada, where he had been employed by the Sands Hotel and Casino. In September 1980, the applicant was promoted to the position of pit boss. The applicant has been employed in the casino industry for the past 14 years.

During 1975, the applicant purchased a house in Las Vegas, Nevada, for a purchase price of $44,950. During 1979, he sold the house for $61,851. The applicant sold the house in order to avoid declaring himself bankrupt. The applicant has never filed an Internal Revenue Service Form 2119 concerning the sale of the house.

The applicant's 1979 and 1980 U.S. Individual Income Tax Returns were prepared by James W. Behe, who was then employed at the Brigantine office of H & R Block. Mr. Behe also prepared the applicant's 1981 return, although Mr. Behe was no longer employed by H & R Block (J-1). The applicant's 1981 return was the primary subject of dispute at the hearing.

The applicant is the father of three sons: Willie, who lives with his mother in Mississippi, Anthony (born in 1981), who lives with his mother in Las Vegas, and Jason, who lives with the applicant (at least during 1981). The applicant provides support for the two children who do not reside in his household. Also, the applicant has provided financial support for his niece, Regina Ducksworth, although no such support was provided during 1981.

Several errors appeared on the applicant's original 1981 return (J-1). More specifically, on line 6c, Anthony, Regina and Willie were listed as dependent children who resided with the applicant and for whom deductions were taken. Further, deductions were taken on line 32b, which emanated from Schedule A - Itemized Deductions, for real estate taxes and home mortgage interest expenses, in the amount of $4,213, which the applicant did not incur during 1981. The applicant claimed entitlement to and received a $516 refund as a result of the filing of his 1981 return.

As a result of an Internal Revenue Service inquiry regarding the applicant's 1980 return and as a result of the Division's objections to renewal of his license, the applicant had H & R Block review his 1980 and 1981 returns. Because errors in the returns were noted, amended returns were prepared and submitted for 1980 and 1981. It was determined that the applicant had underpaid his taxes for both years and that he owed the Internal Revenue Service an amount of $7,404.56, which consisted of principal and interest (P-1). On July 14, 1983, the applicant entered into an Installment Agreement with the Internal Revenue Service, under which he is required to pay $250 per month until the debt is satisfied (P-1). The applicant has made the required payments on a timely basis. Further, on December 27, 1982, H & R Block reimbursed the applicant in the amount of $826 for Internal Revenue Service assessments of interest against him which were due to Mr. Behe's errors. The applicant has never had any other difficulties with the filing of his tax returns. Since these difficulties, the applicant has, for the first time, hired an accountant to assist him in tax matters.

On his amended 1981 return, the applicant rectified the previously cited errors (J-2). More specifically, under line 6c the applicant claimed only Jason as his child who lived with him, and under line 6d, the applicant claimed only Anthony as a dependent. Further, the applicant did not claim any deductions for real estate taxes or home mortgage interest expense. In addition, other discrepancies between the two returns were noted. More specifically, on line 8a the applicant declared no interest income on his original return (J-1), but declared $17 on his amended return (J-2). Also, on line 38 the applicant claimed a $50 credit for political contributions on his original return (J-1), which was not claimed on his amended return (J-2). Other discrepancies appear in the respective schedule(s) A - Itemized Deductions. More specifically, on line 1 the applicant claimed a $150 health insurance deduction on his original return (J-1), which was not claimed on his amended return (J-2); on line 13b, the applicant claimed a deduction of $950 for automobile sales tax on his original return (J-1), but claimed only $650 on his amended return (J-2); on line 24, contributions, the applicant claimed $625 on his original return (J-1), but claimed only $205 on his amended return (J-2); and on line 31, uniforms and cleaning, the applicant claimed $830 on his original return (J-1), but claimed only $400 on his amended return (J-2). As a result of the filing of the amended 1981 return, the applicant had a tax liability of $2,313, or, together with the refund previously received, a total balance due of $2,829 (J-2).

All of the preceding evidence is undisputed and believable and is thus FOUND AS FACT.

(B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's failure to file a form 2119 with the Internal Revenue Service concerning the sale of his Las Vegas house, the circumstances surrounding the errors on his original 1981 return and his credibility.

Mr. Ducksworth testified that he did not file or cause to be filed a form 2119 concerning the property he had owned in Las Vegas because he did not believe it was necessary. Although the applicant sold the premises in 1979 for $16,901 more than he paid for it in 1975, he contended that he did not make a profit. This contention was based upon the existence of a second mortgage on the property and the existence of loans,

the proceeds of which were used to make improvements to the property. Also, the applicant discussed the sale of this residence with Mr. Behe, his tax preparer. Mr. Behe indicated that no form had to be filed.

Similarly, the applicant explained the circumstances surrounding the errors on his original 1981 return. First concerned the deduction taken for Regina on line 6c (J-1). The applicant conceded that, although he had supported Regina in prior years, he did not do so in 1981. However, the applicant advised Mr. Behe of the changes in his tax status during 1981. Nevertheless, Regina's name was included on the return. I also note that the applicant did not claim Jason on his original return, a deduction to which he was entitled. The applicant's tax expert, Mr. McCarty, testified that an error in listing a dependent under line 6c as opposed to line 6d on a return constitutes a procedural error and has no effect upon tax liability.

The applicant further described the circumstances surrounding his claim of entitlement to deductions for real estate taxes and home mortgage interest expense on his original return. Mr. Ducksworth had incurred substantial moving expenses during 1981 and inquired of Mr. Behe as to the deductibility of these expenses. Mr. Behe replied that the expenses could be deducted and, apparently, included them as set forth above.

Although the applicant conceded that he was not entitled to the deductions described herein, he was unaware of their specific inclusion on his original return. The applicant had no specific knowledge of the tax laws. He merely provided Mr. Behe with the information that seemed to be appropriate and relied upon his tax preparer. The applicant did not supply any information to Mr. Behe which comprised the erroneous deductions. Further, the applicant has no idea of the source of the amounts claimed. The applicant did not review the completed original return; rather, he was very glad that he did not have any additional tax liability and merely signed the return and mailed it to the Internal Revenue Service. The applicant stated that this procedure was similar with his past practice and that he relied totally upon his tax preparer, whom the applicant assumed had expert knowledge of the tax laws.

There is no doubt that Mr. Ducksworth is ultimately responsible for the errors on the return. Further, it is apparent that had the applicant reviewed the return he should have recognized the errors because they concerned deductions to which he was simply not entitled. However, the issue is whether the applicant willfully filed the return with false information or whether his explanation is reasonable.

Aside from the return itself, the only evidence of the applicant's conduct at the time the return was filed came from his testimony. Therefore, it is appropriate to consider the applicant's credibility.

Initially, Mr. Ducksworth's position in this matter must be recognized. He is the applicant for continued licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during the review of the record that from my observations of the applicant's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was consistent, believable and persuasive. Further, his testimony comported fully with human experience. In addition, there was no witness offered to refute any fact to which the applicant testified.

Although the applicant is responsible for the errors on the return, which were extremely careless, he did not willfully or knowingly file the return with false information.

After consideration of the entire record in this matter, I further **FIND** that:

1. The applicant's reliance upon his tax preparer's advice, to the effect that he was not required to file a Form 2119 with the Internal Revenue Service, was erroneous but reasonable.

2. The applicant failed to review his completed original 1981 return prior to filing it with the Internal Revenue Service. This was very careless.

3. At the time the original 1981 return was filed with the Internal Revenue Service, the applicant was unaware that the return claimed deductions to which he was not entitled.

4. The applicant relied upon his tax preparer, whom he assumed to have expertise concerning the tax laws. This reliance comports fully with human experience and was reasonable.

5. The applicant's explanation of the reasons for the filing of the original 1981 return with false information was reasonable and persuasive.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86g

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under 86c, even if there has not been a prosecution for such conduct. The Division alleged under Section 86c(4) that the applicant's conduct in regard to the filing of his original 1981 return is inimical to the policies of the Act.

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions ... are designed to extend strict State regulation to all persons, ... practices and associations related to" casinos and the "comprehensive law-enforcement supervision ... is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division contends that certain deductions contained on the applicant's 1981 return constitute violations of various sections of the federal tax law and, as such, establish that his continued licensure would be inimical to the policies of the Act. More specifically, the Division contends that the applicant violated 26 U.S.C.A. § 152, because he was not entitled to claim Regina Ducksworth as a dependent; 26 U.S.C.A. § 164(a), because he was not entitled to a deduction for real estate taxes; and 26 U.S.C.A. § 163(a), because he was not entitled to a deduction for home mortgage interest expense.

Although it was established, and the applicant conceded, that he was not entitled to claim these deductions, the Division did not identify that section of the Internal Revenue Code which would classify the conduct as a criminal act. Nevertheless, it would appear that the Division would argue that the applicant's conduct constitutes a violation of 26 U.S.C.A. § 7201, attempt to evade or defeat tax, which provides as follows:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more that $100,000 ($500,000 in the case of a corporation), or imprisoned not more than five years, or both, together with the costs of prosecution.

Elements of the offense of attempting to evade income tax are: (1) willfulness, (2) the existence of tax deficiency, i.e., a tax due and owing, and (3) an affirmative act constituting evasion or attempted evasion. U.S. v. Buckner, 610 F. 2d 570, cert. den. 100 S. Ct. 1646, 445 U.S. 961, 64 L.Ed. 2d 235 C.A. Cal. 1979, Cf. U.S. v. Wilkins, 385 F. 2d 465, cert. den. 88 S. Ct. 1043, 390 U.S. 951, 19 L.Ed. 2d 1144, C.A. Va. 1967; U.S. v. DeNiro 392 F. 2d 753, cert. den. 89 S. Ct. 89, 393 U.S. 826, 21 L.Ed. 2d 97, C.A. Ohio 1968; U.S. v. Hans, 543 F. Supp. 1119, (D.Ohio 1982).

"'Willfulness' as used in this section means a voluntary intentional violation of a known duty." U.S. v. King, 616 F. 2d 1034, cert. den. 100 S. Ct. 2950, 446 U.S. 969, 64 L.Ed. 2d 829, (C.A. Minn. 1980). Cf. U.S. v. Ruffin, 575 F. 2d 346 (C.A.N.Y. 1978). A concise discussion of willfulness, as applied in this section, is found in U.S. v. Anderson, 535 F. Supp. 1230, new trial denied 541 F. 2d 660 (U.C. Pa. 1982), as follows:

> Requisite element of willfulness in a prosecution for criminal income tax evasion requires an awareness on the part of the taxpayer of a tax obligation; that an intentional rather than an inadvertent act or omission was involved; and that the behavior of the taxpayer was motivated by a specific intent to conceal in contrast to a genuine misunderstanding of the requirements of law or a good faith belief that the income was not taxable. Id. at 1239.

In U.S. v. Conforte, 624 F. 2d 869, cert. den. 101 S. Ct. 568, 449 U.S. 1012, 66 L.Ed. 2d 470 (C.A. Nev.1980), the court stated, "[a] lthough direct proof of the taxpayer's intent to evade taxes is rarely available, willfulness may be inferred by the trier of fact and from all the facts and circumstances of the attempted understatement of tax" Id. at 871.

Although the Division established the existence of a tax deficiency, it did not establish that the applicant's conduct was willful, nor that it was an affirmative act constituting evasion or attempted evasion. Therefore, the Division has failed to establish a violation of the federal tax laws.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the continued licensure of the applicant is inimical to the policies of the act, pursuant to section 86c(4); and I further **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of section 86g.

(B) N.J.S.A.5:12-89b(1)

Under Section 89b(1) of the Act, Mr. Ducksworth was required to establish, by clear and convincing evidence, that he possesses financial stability, integrity and responsibility. The Division raised concern regarding the applicant's filing of his original 1981 return.

There was no dispute that the applicant's original return contained deductions to which he was not entitled. However, there was no evidence which would indicate that these claims were knowing, purposeful or intentional acts. Nevertheless, the errors were obvious and should have been recognized by the applicant. However, given his explanation of the circumstances underlying the filing of the return and the manner in which he has conducted his personal financial affairs at all other times, these errors do not reflect adversely upon the applicant. Further, the applicant has clearly and convincingly demonstrated that he continues to possess the requisite degree of financial stability, integrity and responsibility for licensure.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his financial stability, integrity and responsibility.

(C) N.J.S.A. 5:12-89b(2)

Under Section 89b(2) of the Act, Mr. Ducksworth was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2. Here the Division has again raised issue regarding the applicant's filing of a false income tax return for 1981.

The applicant refuted the accusations of misconduct which were raised against him. Although the applicant committed a very careless error in the filing of his original return, such does not reflect adversely upon his character, honesty and integrity. The Division has cited no conduct by the applicant which would establish a diminution of his character, honesty and integrity since original licensure. Therefore, the applicant is entirely suitable for continued licensure to conduct gaming activities in this State.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act.

ORDER OF DISPOSITION

I **ORDER** that the application of James E. Ducksworth for renewal of his casino key employee license be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 9, 1983
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

J-1 U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (5 pages)

J-2 Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages)

P-1 Department of the Treasury - Internal Revenue Service Installment Agreement, James Ducksworth, July 14, 1983

P-2 Letter to James Ducksworth from Dorothy C. Ortutay, District Manager, H & R Block, December 27, 1982

EXHIBITS NOT ADMITTED INTO EVIDENCE

R-1Id. U.S. Individual Income Tax Return 1981, James Ducksworth, April 15, 1982 (6 pages)(See J-1)

R-2Id. Amended U.S. Individual Income Tax Return 1981, James Ducksworth, December 27, 1982 (6 pages) (See J-2)

R-3Id. Real Estate Settlement Agreement (2 pages)

WITNESS LIST

FOR THE APPLICANT:

James E. Ducksworth

John McCarty

FOR THE RESPONDENT:

Robert W. Latimer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 81-EA-360
APPLICATION NO. 18849-22
OAL DOCKET NO. CCC 6205-81

APPLICATION OF JOHN T. ECKSTINE, JR.
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on May 20, 1982, recommending that the application of John T. Eckstine, Jr., for a casino employee license be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of June 22, 1982, to reject the portion of the initial decision finding that the applicant failed to establish by clear and convincing evidence his good character, honesty and integrity and to grant the application,

IT IS on this 13th day of May 1985, ORDERED that the portion of the initial decision of the Office of Administrative Law finding that the applicant lacks good character, honesty and integrity be and hereby is rejected based upon the Commission's finding that, upon consideration of the entire record, the applicant has met his affirmative burden of establishing by clear and convincing evidence his

good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b); and

IT IS FURTHER ORDERED that the application of John T. Eckstine, Jr., for a casino employee license be and hereby is granted; and

IT IS FURTHER ORDERED that copies of this final order be served upon John T. Eckstine, Jr., the Division of Gaming Enforcement and the Office of Adminsitrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6205-81

AGENCY DKT. NO. 81-EA-360

JOHN T. ECKSTINE, JR.

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

John T. Eckstine, Pro Se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed April 5, 1982 Decided May 20, 1982

BEFORE **JEFF S. MASIN,** ALJ:

John T. Eckstine, Jr., has applied to the Casino Control Commission for a license as a casino employee (administrative assistant). The Division of Gaming Enforcement opposed Mr. Eckstine's application in a letter filed with the Commission on August 27, 1981. Mr. Eckstine requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on January 27, 1982, and the prehearing order was issued on February 15, 1982. A hearing was held before Judge Masin at the Ocean County Administration Building, Toms River, on April 5, 1982.

In the prehearing order the following issues were identified:

(a) Did the applicant fail to provide information, documentation and assurances required by the Casino Control Act, N.J.S.A. 5:12-85-1 et seq., or fail to reveal any fact material to qualification, or supply information which is untrue or misleading as to a material fact pertaining to the qualification criteria, in violation of N.J.S.A. 5:12-86(b)?

(b) Does the applicant's alleged conviction for sale of hashish constitute a basis for disqualification under the terms of N.J.S.A. 5:12-86(c)?

(c) Does the evidence indicate that the applicant has the required good character, honesty and integrity necessary for licensure?

(d) If applicable, has the applicant affirmatively demonstrated his rehabilitation, in conformity with N.J.S.A. 5:12-90(h)?

The incident from which Mr. Eckstine's problems arose involved his admitted sale of hashish to an undercover agent for the United States Army, the sale having occurred in Grafenwoehr, Bavaria, Germany. The sales apparently took place in April 1979. Mr. Eckstine testified on his own behalf and stated that near the end of February 1979 he met a soldier in West Germany who said that he was interested in obtaining hashish. Eckstine, who at that time was a civilian employed in a military related education program for Big Bend Community College, stated that he kept telling the soldier that he did not know anyone who had hashish. Sometime thereafter, Mr. Eckstine became aware that the brother of a German friend of his had returned from France with a quantity of hashish. According to Eckstine on two occasions he sold approximately 20 grams of hashish to the soldier. He was eventually arrested, the soldier having been an undercover agent for the military authorities. Thereafter, Eckstine met with German and American military police and agreed to cooperate with these authorities. It was as a result of this cooperation that he believed that his arrest and conviction record in Germany had been expunged and it was this belief which led Eckstine to fail to disclose his arrest and conviction on his Personal History Disclosure Form-2, which he filed with the Casino Control Commission in the spring of 1980.

Eckstine explained that after having been arrested, he was approached by American authorities who asked him to cooperate with them. Eckstine stated that he was

offered the choice of either cooperating or going to jail and decided to cooperate. Eckstine was then released from custody and thereafter was sent out on "numerous occasions" to attempt to obtain information about who was selling drugs. Eckstine was given money to buy drinks for individuals to try to obtain information from them. He did get some information regarding several military policemen who were selling drugs. After Eckstine was convicted, some time in the early part of May 1979, he no longer desired to cooperate with the authorities and left Germany. Eckstine testified that he left on his own and was never notified by anyone that he had been ordered to leave the country. However, a report received in evidence from the United States Army Criminal Investigation Command (R-2) indicates that Eckstine "has been returned to the United States in mid-June by the request of the German government; with the payment of a fine."

In the course of his testimony, Mr. Eckstine acknowledged that he had not told the truth to the military authorities concerning the source of the drugs which he had sold. He indicated that he was already in trouble and he did not wish to drag his friends into the problem. Eckstine is not sure whether he told the German authorities the same story that he told the American authorities concerning the source of his drugs.

The applicant testified that he served in the United States Army from 1969 through 1971 and at that time he worked as an enlisted man for counter intelligence, specifically in "source control." In this work Eckstine, on occasion, was required to go to the German civilian authorities in order to obtain expungements for various informants employed by the military. Eckstine described his role in these proceedings as that of a courier and said that he was not aware whether or not an individual who obtained an expungement ever got any paper work from the German courts or police indicating that an expungement had been granted. The decision to ask for an expungement would be made by the head of operations or by the commanding officer. Eckstine received a good conduct discharge from the military and thereafter remained in Germany to work on his master's degree. He was employed by special services as a photographer and after he obtained his master's, he worked for Project Transition, a program designed to introduce soldiers to civilian work experience. Thereafter, Eckstine was employed in stereo sales for the PX and then he became employed by Big Bend Community College, which had a contract with the army for GED and college preparatory courses for soldiers stationed in Germany. Eckstine began working for Big Bend in 1975 and returned to the United States in 1979. Thereafter, he was employed by Ocean County CETA and he is still employed

there. He is responsible for the testing, scoring and scheduling of examinations. He has been active in the Democratic party in Ocean County, has traveled throughout the county working with local Democratic clubs and for Senator Russo's campaign.

In the course of his presentation, Mr. Eckstine presented approximately 20 letters of recommendation from individuals in the Ocean County area. These were all marked in evidence and have been considered by the court in the course of its deliberations.

In response to questions asked on cross-examination, Mr. Eckstine admitted that no one ever told him that his record was going to be expunged or said that it had been expunged. However, he testified that two criminal investigation division investigators told him that his record would "not exist" if he cooperated. He assumed that this meant that his record would be expunged. He admitted that he understood question 46 on the Personal History Disclosure Form, which asked whether he had ever been arrested or convicted of a criminal or disorderly persons offense in this State or any other jurisdiction. In answer to a question posed by the Deputy Attorney General, Mr. Eckstine stated that he assumed that he would have a better chance of getting a license or a job if he had not been arrested.

DISCUSSION

The evidence in this case appears to indicate that Mr. Eckstine engaged in an aberrational act when he sold hashish in 1979 to an undercover informant for the United States military authorities in Germany. The record before me does not permit any conclusion other than that Mr. Eckstine's background prior to 1979 was that of a law-abiding citizen. The applicant had served in the United States Army and had been honorably discharged. He had pursued his education in Germany and thereafter worked in educational programs designed to aid military personnel in their readjustment to civilian life. He also had been employed in programs aimed at educating soldiers. All of the applicant's activities prior to 1979 deserve praise and indicate a good character.

Unfortunately, having engaged in the aberrational act of selling hashish, Mr. Eckstine proceeded to compound his problems by lying to the military and perhaps to the civilian authorities concerning the source of the drugs which he had sold. While feigning to cooperate with the authorities, Eckstine proceeded to lie to them. His

subsequent cooperation, which I believe did occur although I am not presented with any support for his testimony, does not erase the harm created by his having lied to the authorities. That error, more than anything else in this case, is a substantial stumbling block to a conclusion that Mr. Eckstine can be licensed.

The purpose of the Casino Control Act is to attempt to assure that those individuals licensed to work in casino-related activities will be upstanding citizens who can be counted on to comply with the rules and regulations governing the operations of the casino industry, and part and parcel of that purpose is to assure that employees will cooperate with gaming authorities, be they the Commission or the Division, in any matters in which those agencies have an interest. Where, as here, an individual has demonstrated a relatively recent history of having presented false information to governmental authorities, the licensing authority must give pause before it proceeds to permit such an individual to obtain a license. The nature of Mr. Eckstine's act, done at a time when he was purportedly cooperating with the very authorities to whom he lied, makes that need for caution even greater. Mr. Eckstine had apparently attempted to win over the military authorities and obtain their trust by agreeing to cooperate in order to protect himself against a possible jail sentence. However, rather than cooperate completely, he chose to cooperate only partially and to lie in order to protect others whom he did not wish to involve. While his motivation for such action is perhaps understandable, given the friendship which he had with the persons from whom he obtained the drugs, the failure to inform the authorities honestly of the source of his drugs constitutes a mark against his good character, honesty and integrity. These very qualities are most highly valued by the Casino Control Act, which requires that an individual who is to receive a license as a casino employee must possess good character, honesty and integrity and must prove that he possesses these traits by clear and convincing evidence, N.J.S.A. 5:12-90(b), incorporating N.J.S.A. 5:12-89(b)(2).

Although this court is impressed by the very strong letters of recommendation which Mr. Eckstine has presented on his behalf, the court cannot find these letters to be sufficient to overcome the damage done by Mr. Eckstine's actions in Germany. Since returning to the United States, Mr. Eckstine has engaged in activities which are commendable and which hopefully will be continued after this matter has ended. However, given that only three years have passed since the incident and given the nature of the action, that is, the supplying of false information to authorities with whom he was pretending to cooperate, I **CONCLUDE** that Mr. Eckstine has failed to establish by clear

and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure. Therefore, I am reluctantly persuaded that I must deny his license.

The court hastens to add that in connection with Mr. Eckstine's failure to list his arrest and conviction on the Personal History Disclosure Form, the court is convinced that Mr. Eckstine may have operated under an honest belief that his conviction had been expunged. While he had never received paper work from Germany, given the fact that he had returned to the United States and no longer had contact with the German authorities or the military police, Eckstine may not have considered the receipt of a document evidencing the expungement as necessary. Further, there is no evidence to indicate that in his activities with the military while serving in counter intelligence he became familiar with the paper work involved in the processing of an expungement through the German court system and the paper work that may, or may not, be produced by the court system and the police to inform an individual that he has received an expungement. I **FIND** that Mr. Eckstine did not purposely and intentionally attempt to mislead the Division or the Commission when he failed to list his arrest and conviction on his Personal History Disclosure Form.

In summary, while I find that Mr. Eckstine did not violate his trust with the Division and Commission in regard to providing them with accurate information on his Personal History Disclosure Form, I do **FIND** that his prior activities in Germany require denial of licensure because they prevent him from establishing by clear and convincing evidence his good character, honesty and integrity.

The casino employee license application is **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 620- 81

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 21, 1982
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

May 20, 1982
DATE

Nancy L. Finkel
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

May 24, 1982
DATE

Ronald L. Parkerson
OFFICE OF ADMINISTRATIVE LAW

bm

On behalf of the Petitioner:

P-1 Letter of April 2, 1982, from John Paul Doyle.
P-2 Letter of March 22, 1982, from Patricia J. Hanlon.
P-3 Letter of March 30, 1982, from Patricia Jakubowski.
P-4 Letter of February 24, 1982, from Judith A. Baker.
P-5 Letter of October 19, 1981 from, Jane H. Silver, Ed. D.
P-6 Letter of March 15, 1982, from Don E. Whitcraft, Ph.D.
P-7 Letter of March 30, 1982, from Anthony M. Sellitto, Jr., Esq.
P-8 Letter of March 29, 1982, from Darlene Davis.
P-9 Letter of March 30, 1982, from Michele Hutchinson.
P-10 Letter of March 19, 1982, from Arthur F. Milosey.
P-11 Letter of April 1, 1982, from Mary M. Carpinelli.
P-12 Letter of March 22, 1982, from Eugene R. Thatcher.
P-13 Letter of April 1, 1982, from Roy E. Baccarella.
P-14 Letter of March 30, 1982, from Leonard W. Roeber, Esq.
P-15 Letter of September 20, 1979, from James J. Hearn.
P-16 Letter of March 31, 1982, from Bill Carine.
P-17 Letter of March 31, 1982 from Patricia Schinski.
P-18 Letter of April 1, 1982, from Ethel A. Zaun.
P-19 Letter of March 15, 1982, from Lucille C. Foley.
P-20 Letter of April 1, 1982, from Maryann Wrighter.

On behalf of the Respondent:

R-1 C.I.D. Report of Investigation, consisting of 3 pages.
R-2 C.I.D. Report of Investigation, 1 page.

Joint Exhibit:

J-1 Personal History Disclosure Form-2.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-431
OAL DOCKET NO. CCC 339-84
REGISTRATION NO. 47720-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, V. ROBERT G. EDELBACH, Respondent.	: : : : : : :	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 9, 1984, recommending the complaint be dismissed; and no exceptions having been filed; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of August 22, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint,

IT IS on this 11th day of March 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint against respondent's casino hotel employee registration be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Robert G. Edelbach and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 339-84
AGENCY DKT. NO. 83-431

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
ROBERT G. EDELBACH,
Respondent.

APPEARANCES:

Ralph Fusco, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Robert G. Edelbach, respondent, pro se

Record Closed: May 24, 1984 Decided: July 9, 1984

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (hereinafter referred to as the "Division") with the Casino Control Commission on December 14, 1983, seeking the revocation of the casino hotel employee registration issued to the respondent, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Edelbach requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held by way of a telephone conference call on March 12, 1984, and at the time the parties agreed that the issues in this matter are:

(1) Whether the respondent is disqualified from registration, pursuant to N.J.S.A. 5:12-86c, because of a criminal conviction.

(2) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

The hearing took place on May 24, 1984, at the Ventnor City Hall and the record in this matter closed on that date.

Robert G. Edelbach was indicted in Ocean County on April 28, 1982, for five counts of theft, all violations of N.J.S.A. 2C:20-3a (P-1). The specific counts are:

(1) The theft of a 1979 Suzuki dirt bike, having a value of over $500, belonging to Frank LaRocca, on November 27, 1981

(2) The theft of a Johnson outboard engine, having a value of over $500, belonging to Hance and Smythe, Inc., on April 20, 1981

(3) The theft of assorted jewelry, having a value between $200 and $500, belonging to Ada Pircher, on December 25, 1981

(4) The theft of assorted jewelry, camera equipment and a .32 caliber handgun, having a total value in excess of $500, belonging to James Rikeman, in December 1981

(5) The theft of a Johnson outboard engine, having a value of over $500, belonging to Tracy Tucker, on May 19, 1981 (P-1).

After plea bargaining, the respondent pled guilty to counts 4 and 5, and count 4 was amended to delete the handgun (P-2). On December 23, 1982 the respondent was put on probation, for one year, was required to pay a penalty of $50, and was required to make restitution of $750, in monthly payments of $75 (P-2).

At the hearing, the respondent testified that he was born on October 24, 1963, and that he graduated from high school in June 1982. Between the date of his graduation and the day he was sentenced in December 1982, the respondent performed various odd jobs for his father and his neighbors. Thereafter, Mr. Edelbach worked for a number of restaurants and in May 1983, he started to work at Caesars Boardwalk Regency Hotel and Casino (hereinafter referred to as "Caesers") as a busboy. For one year the respondent worked in the Ambrosia Room at Caesars and just prior to the hearing, the respondent was promoted and will be working at the Primevera Restaurant at Caesars. At the time of the hearing, the respondent was attending classes to improve his skills as a waiter.

Mr. Edelbach stated that he admitted to the police that he was involved in all five incidents for which he was indicted (P-1) and that he also told the police he had taken several volumes of an encyclopedia from his high school and that he failed to return these books.

As to the first count of the indictment, Mr. Edelbach stated that he was in a car driven by a friend, Thomas King, and that he knew that Mr. King planned to steal tires for the car from a gas station. Mr. King saw the mud bike at a gas station and the respondent helped put the mud bike into Mr. King's car. The respondent did not know what happened to the bike.

As to the second count of the indictment, the respondent stated that he and a friend, Jim Rikeman, took the motor from the boat yard belonging to Hance and Smythe, Inc., put the motor into Mr. Rikeman's car and took it to the respondent's home where they kept their boat. At the time of this incident, the respondent was 17 years old and Mr. Rikeman was 16 years old. According to the respondent, it was Mr. Rikeman's idea to steal the motor. When the respondent's father saw the motor, the respondent told him that they had found it.

As to the third count of the indictment, the respondent stated that he was dating Ada Pircher's daughter, Denise, and that he told Denise that he had sold some jewelry given to him by Mr. Rikeman. Denise told him that she needed money to pay her automobile insurance and asked him to sell a ring. He sold the ring and gave all the money to Denise.

As to the fourth count of the indictment, Mr. Edelbach stated that he and Jim Rikeman were angry at Jim's father, James Rikeman, since they had been working for him and had not been paid their salaries. Jim Rikeman gave the respondent some jewelry and asked him to sell it. Mr. Edelbach sold some of the jewelry for less than $50 and the rest of it for approximately $80. The respondent and Jim Rikeman split the money between them. The respondent was not aware of any other items taken from Jim's father and noted that the handgun had been deleted from the indictment.

As to the fifth count of the indictment, the respondent stated that Jim Rikeman did not like Tracy Tucker and decided to take the motor from his boat. Mr. Rikeman did not tell the respondent what he planned to do; however, the respondent did help him take the motor and was aware that Jim Rikeman sold it for approximately 200. Jim Rikeman and the respondent went out and spent this money.

The respondent stated that Jim Rikeman drank a lot of beer and liquor, which he took from his father's house, and the respondent occasionally had something to drink with him.

Since his involvement with the police as to the incidents set forth in the indictment, Mr. Edelbach testified that he no longer is friends with the persons who involved him in these incidents and he recognizes that he got in trouble because of his friendship with these people. The respondent has successfully completed the period of his probation and has completed the restitution.

On behalf of his son, Robert Edelbach testified that he was aware that his son was spending a great deal of time with Jim Rikeman and that he was working for Jim Rikeman's father but that he was not aware that his son was involved in any criminal activities until he was arrested. At that time, the respondent's father also learned that several of his son's friends had prior criminal records. Mr. Edelbach stated that he feels his son now recognizes his mistakes, that he is rehabilitated and that he will be all right if he can continue to work.

The following letters were admitted into evidence on behalf of the respondent as part of his proof of rehabilitation:

A letter from Louis J. Torsiello, dated October 3, 1982, stating that he has been a neighbor and friend of the Edlebach family for approximately seven

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years and that the respondent has cut his grass and performed other chores for him during a three-year period of time and that he has never had any problem with any missing items of value. According to Mr. Torsiello, the respondent is a hard worker and a person of good character (R-1).

The Statement of Reasons for the Sentence made by Judge William Huber, stated that the respondent was given a suspended sentence and placed on probation since it was the respondent's first offense and because he was willing to make restitution (R-2).

The respondent's employment application with Caesars Boardwalk Regency Hotel and Casino in which he admitted the fact that he had had a prior criminal conviction (R-3).

A letter from Michael Carpenter, Probation Officer, dated February 6, 1984, stating that the respondent has successfully completed his probation and has paid the $50 penalty and the restitution of $750. Mr. Carpenter stated that the respondent had abided by all the conditions of his probation and that the respondent had taken his obligations seriously (R-5).

A letter from John A. Dulisse, dated April 20, 1984. Mr. Dulisse worked with respondent at the Ambrosia Room and stated that the respondent is a good worker who takes pride in performing his duties and treats everbyody with respect (R-6).

A letter from Midge Rocco, Manager of the Ambrosia Room, dated May 9, 1984. Ms. Rocco stated that the respondent had worked for her for one year and that during that time he was consistently reliable and dependable in the performance of his duties and had proven himself to be an honest, loyal and trustworthy employee (R-7).

I **FIND** the facts as stated above are not in dispute and are pertinent in this matter.

Based on the facts, I **CONCLUDE** that the Division has shown that the 1982 conviction of the respondent is a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c.

The Casino Control Act provides that a person can overcome a prohibition against licensure by affirmatively demonstrating his/her rehabilitation, pursuant to N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated in order to reach a determination as to rehabilitation:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offenses;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

Based on the facts in this matter, I **CONCLUDE** that the respondent has shown by clear and convincing evidence that he has been rehabilitated. During a nine-month period while the respondent was in high school, he was involved in criminal activities that he did not initiate. Since then the respondent he has ceased being friends with the persons who initiated these criminal activities, and he has not been involved in any other criminal activities. Additionally, during that nine-month period, the respondent spent a great deal of time away from home without any parental guidance or supervision. The respondent's father is now affirmatively helping the respondent to keep out of trouble. Since the criminal incidents, Mr. Edelbach graduated from high school and has successfully held a number of jobs. There is a clear indication that the respondent has recognized his prior mistakes and that he will not be involved in any criminal activities in the future.

Therefore, I **ORDER** that the complaint filed by the Division against Robert G. Edelbach be **DISMISSED** and that the casino hotel registration of the respondent not be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 9, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

July 9, 1984
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

JUL 11 1984
DATE

Ronald L. Parker/pbo
OFFICE OF ADMINISTRATIVE LAW

ks

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:

P-1 Indictment filed against Robert G. Edelbach on April 28, 1982, in Ocean County

P-2 Judgment of conviction as to the indictment filed against Robert G. Edelbach

FOR THE RESPONDENT:

R-1 Letter from Louis J. Torsiello to Charles A. Peterson, dated October 3, 1982

R-2 Statement of Reasons for the Sentence made by Judge William H. Huber, dated January 10, 1983 (also part of P-2)

R-3 Caesars Boardwalk Regency Hotel and Casino Employment Application filed by Robert G. Edelbach, dated February 23, 1983

R-4 Caesars Boardwalk Regency Hotel & Casino Employment Application filed by Robert G. Edelbach, dated February 23, 1983 (duplicate of R-3).

R-5 Letter from Michael Carpenter, Probation Officer, dated February 6, 1984

R-6 Letter from John A. Dulisse, dated April 20, 1984

R-7 Letter from Midge Rocco, dated May 9, 1984

WITNESSES

FOR THE RESPONDENT:

Robert G. Edelbach
Robert Edelbach

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 50407-21
AGENCY DOCKET NO. 84-EA-82
OAL DOCKET NO. CCC 4461-84

IN THE MATTER OF THE APPLICATION
OF SHIRLEY G. EPPERLY
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 16, 1984, recommending that the application of Shirley Eppperly for a casino employee license be granted; and no exceptions or objections have been filed; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 16, 1985, to modify the Initial Decision to find that the applicant has established by clear and convincing evidence the affirmative qualifications for licensure as a casino employee as required by N.J.S.A. 5:12-90, and to grant the casino employee application at issue,

IT IS on this 1st day of February 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. Mr. Epperly has established by clear and convincing evidence the affirmative qualifications for licensure as a casino employee as required by N.J.S.A. 5:12-90.

IT IS FURTHER ORDERED that the casino employee license application of Shirley Epperly be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Shirley Epperly and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4461-84

AGENCY DKT. NO. 84-EA-82

SHIRLEY G. EPPERLY,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Shirley G. Epperly, pro se

Anthony D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 4, 1984 Decided: November 15, 1984

BEFORE **JEFF S. MASIN,** ALJ:

Shirley G. Epperly applied to the Casino Control Commission for licensure as a casino employee, designating a blackjack dealer position. The Division of Gaming Enforcement opposed licensure in a letter to the Commission dated May 2, 1984. Mr. Epperly requested a hearing on June 13, 1984, and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held by telephone on August 9, 1984, and a Prehearing Order was issued on August 17, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor Municipal Court on October 4, 1984.

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The allegations upon which the Division bases its request for denial of licensure are set forth in the letter of May 2, 1984. Specifically, the Division alleges that Epperly failed to disclose a number of arrests on his Personal History Disclosure Form (PHDF), which he filed with the Commission and Division. The Division argues that this information was material for licensure and therefore, pursuant to N.J.S.A. 5:12-86(b), the license must be denied.

The first arrest which Epperly failed to disclose occurred on July 10, 1974, in Richmond Heights, Ohio. Epperly was charged with possession of marijuana under 20 grams, an offense comparable with N.J.S.A. 24:21-20(a)(4). According to the Division's letter, Epperly was convicted and fined $231. When questioned by the Division's investigator about this arrest, he indicated that it had slipped his mind. During his testimony at this hearing, Epperly stated that he did not remember the offense until he was told about it by Investigator Brooks of the Division during a telephone conversation after the Personal History Disclosure Form had been filed. Epperly checked with his family and his brother talked to Mr. Epperly's mother, who did recall the incident because she had paid Epperly's fine. The incident apparently occurred two days after Epperly's 17th birthday.

In January 1976, Epperly was arrested by the Cleveland Police Department and charged with assault, comparable to N.J.S.A. 2C:12-1. The Division was unable to obtain any investigation reports concerning this matter. The charge was nolle prossed. Again, Epperly told Investigator Brooks that he had forgotten about the matter. In his testimony at the hearing, the applicant explained that the incident had involved a fight between his stepfather, who was an alcoholic, and his mother. Epperly stepped in to separate them. A police officer had come to the scene. The family knew the officer and the police generally knew about Epperly's stepfather's alcoholic condition as they had been at the house on previous occasions in connection with problems. The stepfather maintained that he was going to press charges. Epperly was released on his personal bond and given a court date, but the matter was eventually nolle prossed. Epperly did not think that there was any record of the incident.

On June 12, 1978, Epperly was arrested by the Cleveland police for criminal damage, an offense comparable to N.J.S.A. 2C:17-3. Again no police reports were available, although the Division determined that Epperly had been convicted and fined $25. According to Epperly, he did not list the matter because he didn't believe there was

any record of it and that it was a minor incident. This problem had also stemmed from an involvement with Epperly's stepfather, who had a drunken spree which led to an argument. The applicant slammed a door and the glass in the door broke. This was just one of many incidents that Epperly became involved in with his stepfather.

Epperly also failed to disclose a 1980 arrest for trespass, an offense comparable to N.J.S.A. 2C:19-3. The Division was unable to obtain any police reports on the matter; however, the applicant was given 30 days in the county jail and fined $250 plus costs. The fine and jail sentence were suspended and costs were paid. According to a letter from Anthony G. Palmieri, Jr., Esq., an attorney in Cleveland, the incident involved Epperly and a friend. They climbed over a fence at a Cleveland municipal park pool after closing time. The police arrived on the scene and issued a citation directing Epperly to appear in court.

Mr. Epperly did list on his Personal History Disclosure Form a breaking and entering charge in the Cleveland Municipal Court. He listed the case as dismissed as of November 1977, but he also noted a $25 fine and costs. It appears that this incident may actually had been a November 1978 charge of breaking and entering, which was reduced to a trespass when it was determined that Epperly and a friend had been drinking some beer on a very cold night and went into an open door of an abandoned building to get out of the cold. The police came on the scene, noticed the open door, and arrested Epperly and his friend. According to Epperly, he recalled this incident because it happened around Thanksgiving time and he was held in jail for 72 hours before being released. He had not been jailed on any other occasions.

On cross-examination, Epperly noted that he had been represented by an attorney in connection with the breaking and entering charge which he had listed on the Personal History Disclosure Form. He had not had an attorney in any of the other cases. He acknowledged that he could read, had read the bold print on page 2 of the Personal History Disclosure Form, had read the opening statement on page 15 relating to question 16 which defined some of the terms used therein, and took about three to four hours to fill out his form, doing so by himself. The witness testified that he understood the term "arrest," but that the term "charge" was vague in his mind and that he did not understand the tickets (the summonses) which he had received on several occasions in the incidents which he did not list as constituting "charges."

In his closing remarks, Mr. Epperly noted that he would not have spent so much money in preparing for a career (about $1,300), and then withheld the kinds of matters which he was charged with failing to disclose.

DISCUSSION

The evidence presented indicates that Mr. Epperly has had several minor scrapes with the law. The one incident which he did disclose, which on its face, as listed by him, was a breaking and entering, but which in fact was reduced to a trespass, was probably the most serious sounding in nature.

Having considered the evidence presented, I am more convinced than not that Mr. Epperly's failure to list the several minor incidents in his past on his PHDF was inadvertent, or at the worst, negligent. I **FIND** no basis for concluding that he intentionally and with a desire to circumvent the licensing process and deceive the Commission or Division did not list the types of matters which are involved herein. It makes little sense to believe that someone would list a breaking and entering which resulted in the imposition of a fine, however minimal, and not list such relatively inconsequential matters as a ten year old possession of marijuana under 25 grams (at an age when he would have been a juvenile in New Jersey); some unprosecuted incidents involving his alcoholic stepfather, and a trespassing at a public pool. While the fine and sentence on that latter incident were of some significance, they were suspended, and it appears that the judge in that incident did not consider the matter very serious.

I cannot conclude that Mr. Epperly acted in an intentional and deceptive way to fool anyone in connection with this matter. While perhaps he was sloppy, or is merely forgetful, I do not believe that this matter should stand in the way of his licensure.

For the reasons expressed, I **CONCLUDE** that Mr. Epperly did not purposely and intentionally withhold information of a material nature from the Division or Commission. Therefore he should be licensed. It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 5, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

November 21, 1984
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

EVIDENCE LIST

Joint exhibits:

J-1 Personal History Disclosure Form - 2A, dated November 21, 1983

On behalf of petitioner:

P-1 Letter of June 5, 1984 from Anthony G. Palmieri, Jr., Esq. (3 pages)

P-2 Transcript of proceedings, In the Matter of City of Cleveland v. Gene Epperly, No. 80CRB19981 (Trespassing - City Pool After Closing) (2 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-205
REGISTRATION NO. 43290-40
OAL DOCKET NO. CCC 7203-83

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

RONALD V. FALGIATORE, :

Respondent. :

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on March 12, 1984, recommending that the casino hotel employee registration held by Ronald V. Falgiatore be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, including the parties' oral arguments, having resolved at its public meeting of April 18, 1984, to modify the Administrative Law Judge's conclusions on the issue of the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c); and the Commission having further resolved to waive said disqualification pursuant to N.J.S.A. 5:12-91(e) and to permit the respondent to retain his casino hotel employee registration,

IT IS on this 14th day of FEBRUARY 1985, ORDERED that, the findings of fact contained in the Initial Decision be and hereby are adopted by the Casino Control Commission and incorporated herein by reference; and

IT IS FURTHER ORDERED that the Administrative Law Judge's conclusions on the issue of the respondent's disqualification be and hereby are modified as follows:

1. The Administrative Law Judge concluded that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(2) as a consequence of his conviction on September 29, 1978, for receiving stolen property, contrary to N.J.S.A. 2A:139-1.

   The Administrative Law Judge's analysis is at variance with the Commission's accepted construction of N.J.S.A. 5:12-86(c). The respondent's criminal record must be evaluated under N.J.S.A. 5:12-86(c)(1). His conviction for possession of stolen property contrary to N.J.S.A. 2A:139-1 is comparable to a conviction for receiving stolen property contrary to N.J.S.A. 2C:20-7, which is a disqualifying offense listed in N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent's disqualification be and hereby is waived in consideration of: (a) his employment record since his release from jail in May 1983; (b) the favorable references from two members of NARCO Anonymous who attested to his rehabilitative efforts; and (c) his discontinuance of tne use of alcohol and controlled dangerous substances that contributed in large part to his prior unlawful conduct; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Ronald V. Falgiatore and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7203-83
AGENCY DKT. NO. 83-205

DIVISION OF GAMING ENFORCEMENT,
Petitioner
v.
RONALD V. FALGIATORE,
Respondent.

APPEARANCES:

William Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Peter Abatemarco, Esq., for respondent (Cape-Atlantic Legal Services, attorneys)

Record Closed: January 27, 1984 Decided: March 12, 1984

BEFORE **NORMAN D. SMITH,** ALJ:

The Division of Gaming Enforcement seeks to obtain an Order from the Casino Control Commission revoking the Casino Hotel Employee Registration of Ronald V. Falgiatore, because of Mr. Falgiatore's criminal record. Mr. Falgiatore requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

Certain Judgments of Conviction were documented in the evidence. On June 21, 1978, Mr. Falgiatore pled guilty to possession of stolen property, N.J.S.A. 2A:139-1. He was sentenced to nine months in the county jail, with credit for 82 days served. This offense requires disqualification. N.J.S.A. 5:12-86c(2).

On July 8, 1980, Mr. Falgiatore pled guilty to attempting to obtain a controlled dangerous substance by fraud. N.J.S.A. 24:21-22a(3) and 24:21-24. He was sentenced to three years in the county jail with credit given for 238 days served and on July 10, 1980, Mr. Falgiatore pled guilty to the charge of theft (blank prescription forms from the office of physicians). N.J.S.A. 2C:20-3.

On August 21, 1980, Mr. Falgiatore pled guilty to uttering a forged instrument (prescription). N.J.S.A. 2C:21-1a(3). He was sentenced to three years in State prison.

On August 31, 1981, Mr. Falgiatore pled guilty to two counts of possession of a controlled dangerous substance (N.J.S.A. 24:21-20a(1)), and one count of obtaining a controlled dangerous substance by fraud (N.J.S.A. 24:21-22a(3)). He was sentenced to two years in the State prison.

There may well be other convictions in Mr. Falgiatore's past that were not documented. Mr. Falgiatore seems to remember that he was convicted of possession of prescription drugs in the early 1960s. He also remembers charges of breaking, entering and larceny and check forging in the late 1960s. His memory is not clear concerning the events of the last 20 years. By his own testimony, this 37-year-old man was a drug addict for approximately 20 years. He began at the age of 17 and ceased his drug involvement on January 7, 1983, the day he entered Cape May County Jail. During those 20 years, in Mr. Falgiatore's own words, he cared for nothing and no one. His life revolved around obtaining drugs of every description, heroin, marijuana, speed; he used whatever was available. All of his crimes are drug related.

When he entered Cape May County Jail in January 1983, he spent 30 days "in the hole." He was incoherent and suffered from withdrawal symptoms. He hallucinated that dead people were sharing his cell with him. After 30 days, he calmed down and came out of solitary confinement. An acquaintance of his who was also an inmate tried to help him out of his depression by reading the Bible to him. He started to attend Alcoholics Anonymous meetings in prison. One of the meetings featured a lecturer from Narcotics Anonymous. After his release from prison on May 23, 1983, Mr. Falgiatore became an active member of Narcotics Anonymous. Two very impressive witnesses testified on his behalf. These gentlemen were both members of Narcotics Anonymous who had successfully rehabilitated themselves. They are convinced that Mr. Falgiatore's desire for rehabilitation is sincere. They have found him employment in a restaurant where he washes dishes and waits on tables.

Mr. Falgiatore attends Catholic services on Sunday and reads the Bible regularly. He claims to have found meaning to his life. He has begun making small child support payments and visiting his child, whom he had not seen for the first seven years of the child's life.

Based upon the foregoing evidence, certain conclusions can be drawn. Mr. Falgiatore has committed an offense requiring disqualification, that is N.J.S.A. 2A:139-1, receiving stolen property. He has committed several other offenses and spent, of his 37 years, 20 years as a drug addict. This renders his licensure inimical to the policy of the Casino Control Act and to casino operations. N.J.S.A. 5:12-86c(4). Counsel argues that Mr. Falgiatore is rehabilitated. However, rehabilitation must be shown affirmatively by clear and convincing evidence. After paying close attention to the appearance and demeanor of the witnesses who appeared on his behalf, I am satisfied that the process of rehabilitation has been sincerely begun. However, it is impossible to find that the process has been completed. Against 20 years, the entire adult life of this individual, a scant ten months is weighed in the balance. There is no magic time limit for rehabilitation. Common experience dictates that the period of rehabilitation must bear some reasonable relationship to the period of illicit conduct and the nature of that conduct. Ten months is simply not enough in this case. The true intent of a human being can never be known except by his actions. The law does not require me to read Mr. Falgiatore's mind regarding his intentions for the future. Even if I were to do so, I could not rely on his good intentions alone, nor should the casino industry be asked to so rely in light of his past conduct.

For the foregoing reasons, it is hereby **ORDERED** that the Casino Hotel Employee Registration of Ronald V. Falgiatore be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 7206-83

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 12, 1984
DATE

Norman D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

March 12, 1984
DATE

Bernadette T. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

March 14, 1984
DATE

Ronald L. Parker/pbo
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-70
APPLICATION NO. 19414-21
OAL DOCKET NO. CCC 4888-83

IN THE MATTER OF THE APPLICATION
OF KEVIN M. FARRINGTON FOR A
CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on April 12, 1984, recommending that the casino employee license application of Kevin M. Farrington be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of May 16, 1984, to modify the Administrative Law Judge's conclusions on the issue of Farrington's disqualification pursuant to N.J.S.A. 5:12-86(c) and deny the application,

IT IS on this 13th day of FEBRUARY 1985, ORDERED that the Administrative Law Judge's conclusions on the issue of Farrington's disqualification be and hereby are modified as follows:

1. The Administrative Law Judge concluded that Farrington is disqualified pursuant to N.J.S.A. 5:12-86(c)(2) as a consequence of his conviction on March 14, 1980, for possession of stolen property, contrary to N.J.S.A. 2A:139-1.

2. The Administrative Law Judge's analysis is at variance with the Commission's construction of N.J.S.A. 5:12-86(c). Having applied for a casino employee license on June 23, 1980, Mr. Farrington's criminal record must be evaluated under N.J.S.A. 5:12-86(c)(1). See, In the Matter of the Application of Robert Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (1980). His conviction for possession of stolen property contrary to N.J.S.A. 2A:139-1 is comparable to a conviction for receiving stolen property contrary to N.J.S.A. 2C:20-7. The latter is a disqualifying offense listed in N.J.S.A. 5:12-86(c)(1), however, consistent with other theft related offenses, the Commission deems receiving stolen property an automatic statutory disqualifier only if it rises to the level of a second or third degree offense. While the ALJ fails to characterize the degree of the offense, the record supports a finding that Farrington was convicted of a third degree offense (R-1 and R-2 in evidence). The applicant is therefore disqualified by reason of his March 14, 1980, conviction for an offense equivalent to a statutory disqualifier, pursuant to N.J.S.A. 5:12-86(c).

IT IS FURTHER ORDERED that the casino employee license application of Kevin M. Farrington be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Kevin M. Farrington is prohibited from reapplying for or obtaining any license,

registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Kevin M. Farrington, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4888-83

AGENCY DKT. NO. 82-EA-70

KEVIN M. FARRINGTON,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Kevin M. Farrington, petitioner, pro se

Anthony D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: February 27, 1984 Decided: April 12, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Kevin M. Farrington to the Casino Control Commission for a casino employee license, permitting him to work in a casino as a security officer. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the act.

2. Whether the petitioner, with specific reference to his 1980 conviction for possession of stolen property, contrary to N.J.S.A. 2A:139-1, has been convicted of an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c of the Casino Control Act.

3. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to section 86c of the act, has demonstrated his rehabilitation, within the meaning of section 90h of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner as a casino employee by letter report to the Casino Control Commission, dated March 31, 1982. On June 27, 1983, the Casino Control Commission received the petitioner's request for a hearing on his license application. On June 30, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference in this matter was scheduled for October 11, 1983. The petitioner failed to appear at that prehearing conference and the matter was subsequently preheard on January 31, 1984. The hearing was held on February 27, 1984.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The petitioner is a 28-year-old resident of Pleasantville, New Jersey, who has lived in the Atlantic City area since 1971. He is one of seven children and his early childhood took place in New York City. At the present time, he lives alone and supports only himself.

At the time of the hearing in this matter, the petitioner had been employed as a custodian for approximately five months at the Casino Career Institute in Atlantic City. The petitioner works the 11:00 p.m. to 7:00 a.m. shift, and it was his testimony that he has a good record with this employer. According to the petitioner, he attended a three-month course at Kelly's Security Academy in Atlantic City. It was his testimony that he satisfactorily completed his training in May 1980.

In May 1975, the petitioner was arrested by the Atlantic City Police in connection with an arson incident in which three people died. According to the petitioner, he had recently met and had been staying with a lady friend and her two children when the fire broke out. The petitioner was able to escape through a window, but the others were trapped in the fire. The petitioner was questioned by the police (Exhibit R-6), and was subsequently charged with three counts of homicide, contrary to N.J.S.A. 2A:113-2, and arson, contrary to N.J.S.A. 2A:89-1. It is undisputed that the petitioner was found not guilty by a trial jury in October 1975.

On April 12, 1979, the petitioner was arrested by the Egg Harbor Township Police and charged with possession of stolen property, contrary to N.J.S.A. 2A:139-1, and possession of marijuana, contrary to N.J.S.A. 24:21-20 (Exhibit R-3). On June 7, 1979, the petitioner was named in one count of a six-count indictment for possession of stolen property, contrary to N.J.S.A. 2A:139-1. His brother, Anthony Farrington, was named in the indictment for breaking and entering with intent to steal, grand larceny, contributing to the delinquency of a minor, malicious damage, and conspiracy (Exhibit R-1).

On January 16, 1980, the petitioner retracted a plea of not guilty and entered a plea of guilty to the charge of possession of stolen property. On March 14, 1980, the petitioner was sentenced to the Atlantic County Jail for a term of six months, with all but 17 days of the sentence suspended and with credit for 17 days already confined in the Atlantic County Jail. The petitioner was also placed on probation for a term of one year and fined $150 (Exhibit R-2).

Explaining his involvement in this incident, the petitioner stated that he had given his brother the key to his apartment, knowing that his brother intended to put stolen stereo equipment in the apartment. The day after the theft, the police came to the petitioner's apartment with a search warrant and found the stolen stereo equipment and a small quantity of marijuana. The petitioner admitted that the marijuana was his, but the charge against him of possession of marijuana was dismissed. On cross-examination, the petitioner acknowledged that a stolen stereo turntable and eight-track player were connected to his own stereo system at the time the police executed their search warrant.

In addition to his present employment as a custodian at the Casino Career Institute, the petitioner has held many jobs since his 1980 conviction for possession of stolen property. Both before and after his conviction, the petitioner worked as a relief

person at Sandson's Bakery. The petitioner acknowledged that he did not get along with some of his fellow employees, but he felt they had worked out their problems and the other employees then left him alone. The petitioner left that employment to become a baker's helper at Caesar's Boardwalk Regency, where he worked for approximately 10 months. He was terminated from that position after cutting a fellow employee on the arm with a long-bladed knife during horseplay.

The petitioner worked at a car wash for approximately four months, but quit when the weather became too cold. He also was employed in a custodial capacity at the Atlantic City Medical Center for approximately six months. He was fired from this position when he was unable to get along with his supervisor. The petitioner was also employed for a time as a pot washer at Schrul's Restaurant in McKee City, New Jersey.

Significantly, the petitioner has held security officer positions with several businesses in the Atlantic City area, including Wells Fargo. The latest security position held by the petitioner was at the Lafayette Motor Inn in 1983. It should be noted that the petitioner held none of these security positions longer than approximately six months.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns a telephone conversation between the petitioner and Division of Gaming Enforcement Investigator Angelo A. Horiates on October 6, 1981. Investigator Horiates testified that he was assigned to conduct the background investigation of the petitioner. In connection with the investigation, the investigator called the petitioner on October 6, 1981, and asked the petitioner some questions, including whether or not the petitioner had ever used marijuana. According to the investigator, the petitioner stated that he had used marijuana. Investigator Horiates then asked the petitioner if he continued to use marijuana and the petitioner responded that he still used the drug occasionally.

Testifying on his own behalf, the petitioner acknowledged that he had discussed his marijuana use with the Division of Gaming Enforcement investigator. However, it was the testimony of the petitioner that he told the investigator that he no longer smoked marijuana and that he had not smoked it since his 1980 conviction for possession of stolen property.

The testimony of Investigator Horiates was straightforward and sincere, and entirely worthy of credit. In contrast, the testimony of the petitioner was less believable. When fairly considered, the testimony offered by Investigator Horiates has the greater weight, produces the stronger impression, and is more convincing as to its truth than the testimony offered by the petitioner. Thus, I additionally **FIND AS FACT** that the petitioner told Investigator Horiates that he had used marijuana in the past and that he continued to use it occasionally.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth at section 86. Pursuant to section 86c, the Commission shall deny licensure to any applicant who has been disqualified on the basis of a conviction of an enumerated statutory disqualifier from licensure.

The petitioner's 1980 conviction for possession of stolen property, in violation of N.J.S.A. 2A:139-1, constitutes an automatic disqualifier from licensure under section 86c(2) of the act. Notwithstanding the undisputed fact that the petitioner has been convicted of an offense which is specifically identified as a disqualifier from licensure, he shall not be denied a casino employee license on the basis of this conviction, provided that he has affirmatively demonstrated his rehabilitation, pursuant to section 90h of the act. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

1. the nature and duties of the position applied for;

2. the nature and seriousness of the offense;

3. the circumstances under which the offense occurred;

4. the date of the offense;

5. the age of the applicant when the offense was committed;

6. whether the offense was an isolated or repeated incident;

7. any social conditions which may have contributed to the offense;

8. any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correction work release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The petitioner was acquitted after a jury trial on charges of arson and homicide in 1975. His conviction for an enumerated disqualifier, possession of stolen property, occurred in 1980, and the offense itself occurred when the petitioner was 23 years old. He is now 28 years old and has had no subsequent arrests or convictions. Thus, it is clear that the petitioner's offense was an isolated incident occurring when he was relatively young. Unfortunately, the offense concerned the knowing receipt of stolen property and the involvement of the petitioner's brother and a minor.

The petitioner successfully completed his probationary period. In addition, he completed a three-month training course for security officers in 1980. The petitioner has been able to find employment since his conviction. Unfortunately, it appears that he has been unable to sustain his employment for any significant period of time. In particular, the petitioner has held three security positions, but none was held for longer than approximately six months. In addition, the petitioner has been terminated from two employments as a result of an altercation with a fellow employee and his inability to get along with his supervisor. His difficulty in interacting with others is of particular importance because he seeks employment as a security officer; a position of sensitivity requiring contact with casino patrons and the public.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has been convicted of an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c of the Casino Control Act. I further **CONCLUDE** that the petitioner has failed to overcome his disqualification from licensure on the basis of his conviction of an offense enumerated under section 86c of the act, by failing to meet his burden of demonstrating, by clear and convincing evidence, his rehabilitation, within the meaning of section 90h of the Casino

Control Act. Finally, I **CONCLUDE** that the petitioner has failed to demonstrate, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of section 90b of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Kevin M. Farrington, for a casino employee license, be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 12, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

April 12, 1984
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

April 16, 1984
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bm

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

R-1 Indictment, dated June 7, 1979
R-2 Certified Judgment of Conviction, dated March 18, 1980
R-3 Investigation report, dated April 16, 1979
R-4 Not in evidence
R-5 Not in evidence
R-6 Sworn statement, dated May 7, 1975

WITNESSES

FOR THE PETITIONER:

Kevin M. Farrington

FOR THE RESPONDENT:

Angelo A. Horiates

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-214
OAL DOCKET NO. CCC 5275-84
LICENSE NO. 08222-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
RICHARD FASCENDA,		
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 18, 1984, recommending that the respondent's casino employee license be revoked; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of February 13, 1985, to affirm and adopt the said initial decision and to revoke the respondent's casino employee license,

IT IS on this 14th day of FEBRUARY 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the respondent's casino employee license be and hereby is revoked based upon the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Richard Fascenda is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Richard Fascenda, the Office of Administrative Law, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5275-84

AGENCY DKT. NO. 84-214

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

RICHARD FASCENDA,

Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Mario D'Alfonso, Esq., for respondent (Avena, Hendren, Friedman & D'Alfonso, attorneys)

Record Closed: November 1, 1984 Decided: December 18, 1984

BEFORE **JEFF S. MASIN,** ALJ:

On June 26, 1984, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking the revocation of Mr. Richard Fascenda's casino employee registration. The basis for the proposed revocation was the claim that Mr. Fascenda had been convicted of theft by deception, welfare fraud, a violation of N.J.S.A. 2C:20-4 and that such a conviction constituted a statutory disqualifying offense under the terms of the Casino Control Act, N.J.S.A. 5:12-1 et seq., specifically Section 86c.

Mr. Fascenda requested a hearing on the matter and it was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on September 14, 1984 and a Prehearing Order was issued on September 21, 1984. A hearing was held before Judge Masin at the Ventnor Municipal Court on November 1, 1984.

THE EVIDENCE

The Division's evidence consisted of a certified copy of the indictment which had been returned against Richard Fascenda and his wife, Rita, by the Camden County Grand Jury, which charged the Fascenda's with having, between May 1981 and April 1982, received welfare from the Camden County Board of Social Services by deception in that they created a "false impression that they were in need of assistance well knowing that Richard Fascenda was employed by Playboy Associates during the above time and failed to report said employment." The action described in the indictment was, according to the charge, an theft in the amount of $6,019.11 and constituted a violation of N.J.S.A. 2C:20-4. The Judgment of Conviction submitted in evidence evidenced that Mr. Fascenda had entered a retraxit plea of guilty to the indictment on December 5, 1983 (listed as 1984 but obviously incorrect) and that on January 27, 1984, he had been sentenced to a five year probationary period with a condition that he pay restitution of $6,019 to the Board of Social Services and that he pay $25 to the Violent Crimes Compensation Fund.

The Division's additional evidence consisted of a single page report of criminal investigation prepared by Sonia Santos, an investigator for the Board of Social Services. This document indicated the nature of the fraud which was broken down between welfare and food stamp benefits and the allegations that Mr. Fascenda had been employed by Playboy Elsinore Associates, the operators of the Playboy (now Atlantis) Hotel/Casino from April 26, 1981 to April 11, 1982. This information was received by way of a wage verification from the employer. According to the investigation report on May 20, 1984, August 13 and November 18, 1981, "Richard and Rita Fascenda completed and signed affidavits requesting continuation of assistance. According to the report these applications did not contain any information from either individual that Mr. Fascenda was employed and as a result of the information obtained on the reports, the Fascenda's "continued receiving a full grant of assistance throughout this period."

In addition to the above, the investigation report notes that Mrs. Fascenda came into the Board offices on September 15, 1984 and, while she declined to give a written statement, she made a verbal admission that her husband was employed with Playboy Associates.

Richard M. Fascenda and Rita Fascenda testified in connection with Mr. Fascenda's defense of the charges. According to Mr. Fascenda he now lives with his wife. Between March of 1981 and June 1982 he lived in Ventnor, having separated from his wife. At that time he was employed as a dealer at Playboy. Mr. Fascenda acknowledged that he and his wife had been collecting welfare before he became employed with Playboy and before he left home. His wife continued to collect benefits after he left the home and he did not notify welfare that he was no longer living in the house. He stopped making trips to the welfare office for any reason and his wife kept getting the checks.

According to Mr. Fascenda he pled guilty as part of a plea bargain. His wife's charges were dismissed. He never received any of the money that was paid by the Board to his wife.

Mr. Fascenda was let go by Playboy on November 22, 1983 and has not been employed since that time, having been unable to obtain any job. He has not attempted to receive welfare since his release from Playboy. He is paying back money as a result of his conviction.

Mr. Fascenda was employed in the casino industry as a blackjack and baccarat dealer.

The respondent testified that when he began collecting welfare in late 1980 he was not working. He had previously owned a cosmetics and girl's clothing store and had lost a lot of money in those ventures. He returned to his wife in June of 1982. They had stopped collecting welfare in May of 1982.

Mr. Fascenda is 39 years old and he and his wife have a 16 year old child.

Rita Fascenda testified that she received welfare and food stamp benefits at her home for all three persons in the family; that is, her hushand, her child and herself. Her husband had left and she continued to collect and did not notify anyone. The checks

came to the house addressed to her and she would cash them. She gave no money to her husband. She used the money to feed her son and keep her house going. She is currently paying back welfare along with her husband, although her charges were dropped. (It should be noted that both Mrs. Fascenda and her son were entitled to receive welfare during the time that Mr. Fascenda was out of the house and could not have been receiving welfare.)

According to Mrs. Facenda's testimony on cross examination, her husband was not aware that she was receiving benefits for him when he was not living at home. There was communication between she and her husband and she would come down to Ventnor to see him with respect to discussions concerning financial matters.

Mrs. Fascenda could not recall when she first learned that she was receiving more money than she was suppose to in light of her husband not being in the home any longer.

Mrs. Fascenda could not understand why the investigation report noted that she had come into the welfare agency on September 15, 1982.

DISCUSSION

The evidence in this case is limited. Mr. Fascenda has not denied that he was indeed convicted of theft by deception, welfare fraud, and this court finds that such a conviction constitutes an enumerated disqualifying defense, pursuant to N.J.S.A. 5:12-86c. As such, pursuant to the Act, the Commission is adjured to revoke the license of one who no longer meets the qualifying tests for registration. Unless rehabilitation is established to overcome the disqualifying factor, Mr. Fascenda must lose his regiatration.

Evidence with respect to rehabilitation is minimal at best. Mr. Fascenda basically indicated that he had pled guilty not because he knew that he and his wife were receiving monies which they were not entitled to, but instead because his wife had received the monies and not reported that he was no longer in the home and there was therefore little choice but to plead guilty. No doubt a factor in his considerations was the dismissal of the charges against his wife.

Another factor mitigating against a finding of rehabilitation is that the five year probation only began at the beginning of February 1984, less than one year ago. Mr. Fascenda will be on probation for a lengthy period of time during which he must make restitution of a substantial amount of money. It may well be too early to determine whether he has rehabilitated himself.

In addition to the above, it should be noted that there is some strong doubt in my mind whether Mr. Fascenda really was totally unaware that the money which his wife was receiving and upon which she was relying to support herself and their child did not include payments being made to the household for three people rather than two. Since there were discussions between them on money matters, the subject of the welfare payments very likely arose.

Finally, the fact that this violation occurred when Fascenda was employed in the industry is of very great significance.

Based on the evidence, and a consideration of the credibility of the witnesses, I **CONCLUDE** that Mr. Fascenda did know, or had reason to believe, that his wife was still receiving benefits for him.

CONCLUSION

In view of Mr. Fascenda's conviction of a statutory disqualifying offense, and his failure to establish rehabilitation, I **CONCLUDE** that the Division has established by a preponderance of the evidence sufficient grounds for revocation of his casino hotel employee registration.

It is **ORDERED** that the respondent's casino hotel employee registration be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 5275-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 18, 84
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

12/18/84
DATE

Mary Ann E. Dorazyk
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 20 1984
DATE

Ronald L. Parker/pbw
OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

On behalf of peitioner:

P-1 Indictment No. 2269-9-83

P-2 Judgment of Conviction, dated January 27, 1984

P-3 Investigation Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE APPLICATION OF GALAXY AIRLINES, INC. FOR EXEMPTION FROM LICENSURE AS A CASINO SERVICE INDUSTRY	OPINION

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman
E. Kenneth Burdge, Vice Chairman
Carl Zeitz, Commissioner
Joel R. Jacobson, Commissioner
Valerie H. Armstrong, Commissioner

APPEARANCES:

For Galaxy Airlines, Inc.:

F. Frederick Perone, Esquire

For the Division of Gaming Enforcement:

R. Lane Stebbins, Deputy Attorney General

For the Casino Control Commission:

Christine Piatek, Assistant Counsel

This matter comes before the Commission on the application of Galaxy Airlines for an exemption from licensure as a casino service industry pursuant to N.J.S.A.

5:12-92(c).[1] That provision of the Casino Control Act provides the Commission with the authority to grant an exemption from casino service industry licensure pursuant to N.J.S.A. 5:12-92(c) to any person or field of commerce that demonstrates:

> (1) That it is regulated by a public agency or that it will provide goods or services in insubstantial or insignificant amounts or quantities; and
>
> (2) That licensing is not deemed necessary in order to protect the public interest or to accomplish the policies established by this act.

An applicant seeking an exemption from licensure must satisfy both components of section 92(c) of the Act as enumerated above. Should the Commission determine that the

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[1]Galaxy Airlines, a scheduled airline carrier, provides charter air transportation services to Atlantic City on a contract basis with Atlantic City casino-hotels. Pursuant to federal regulations, the contract between Galaxy Airlines and each casino it serves is for the transportation of a "single entity" group for which the casino pays a flat fee. Galaxy Airlines was directed by the Commission staff to file a casino service industry license application on May 1, 1984, based on a determination that Galaxy Airlines transacted a level of business that was deemed to be regular or continuing pursuant to N.J.S.A. 5:12-92(c) and the Commission regulations, N.J.A.C. 19:43-1.2(c) and (d). During the 12 months of 1983, Galaxy Airlines transacted business in excess of $166,000 with two casino licensees. During the 12 months of 1984, Galaxy Airlines transacted business in excess of $200,000 with one casino licensee. In lieu of filing a casino service industry license application, Galaxy Airlines filed an application for exemption from casino service industry licensure, pursuant to N.J.S.A. 5:12-92(c), on October 17, 1984.

enterprise seeking an exemption is regulated by a public agency within the meaning of N.J.S.A. 5:12-92(c), it must also determine whether such regulation is sufficient to supplant casino service industry licensure and to protect the public interest and to further the policies of the Act.

In this regard, what the enterprise must establish is that the purposes behind regulation by that public agency are analogous to the purposes of regulation under the Casino Control Act.

The goal of regulation by the Commission is set forth at length in the policy findings of the Casino Control Act, N.J.S.A. 5:12-1(b). More specifically, N.J.S.A. 5:12-1(b)6 provides:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

The Act further provides that the regulatory and investigatory powers and duties of the State shall be fully exercised to exclude persons with known criminal records, habits or associations from casino operations or the ancillary industries regulated under the Act. See, N.J.S.A. 5:12-1(b)7 and 9.

Thus, the goal of regulation by the Commission is to ensure the integrity, public trust and confidence in legalized gaming. The Commission scrutinizes the good character, honesty and integrity of the principal individuals of an enterprise engaged in casino operations and the ancillary industries.[2] Regulation of a casino service industry by another public agency, then, must be comparable in purpose and intensity to regulation under the Act before the Commission will consider that such regulation is sufficient and that licensure by the Commission is unnecessary.

Galaxy Airlines contends that the federal regulation to which it is subject adequately addresses the regulatory concerns of the Commission. The applicant submits that the Federal Aviation Administration and the Civil Aeronautics Bureau (prior to its dismantlement in January 1985) regulate all aspects of the airline industry and that additional regulation is unwarranted.

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[2] N.J.A.C. 19:43-1.3(c) provides:

> Each applicant required to be licensed as a casino service industry in accordance with section 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its

(Footnote Continued)

We are not persuaded that such regulation has similar goals as does regulation by this Commission. The Federal Aviation Administration investigates and regulates airline carriers primarily with respect to safety concerns. Economic, financial and airline fitness concerns which were within the jurisdiction of the Civil Aeronautics Bureau are now regulated by the U.S. Department of Transportation. A fitness investigation is conducted by the Department of Transportation prior to the issuance of a "certificate of public convenience and necessity," which is the equivalent of licensure. While an applicant for licensure is required to submit detailed information with respect to the corporation and its key personnel, the scope of the investigation appears to concentrate on the corporation's economic stability rather than the good character, honesty and integrity of the principals of the corporation. See, 14 C.F.R. <204.5.[3]

(Footnote Continued)
reputation for good character, honesty and integrity. (Emphasis Added)

[3]The legal standard that has been applied by the CAB in determining whether an applicant for licensure has a satisfactory compliance disposition is found in Lone Star Airways, Inc. Fitness Investigation, Order 82-2-27 at 4:

> The threshold compliance issue is whether or not the applicant's compliance disposition is so poor as to prevent a finding of fitness. Disposition to comply with the Federal Aviation [sic] Act and with other applicable laws and

(Footnote Continued)

The applicant has presented substantial evidence of the regulation of the safety and economic aspects of the airline industry. Of course, we assert no jurisdiction over the regulation of rates, safety or the specific transportation services provided. However, the applicant has not established that the regulation to which it is subject meets the standard required under the Casino Control Act. That standard, as cited earlier, requires a showing of good character, honesty and integrity. Galaxy Airlines has not established that it is regulated by another public agency with concerns similar to that of the Casino Control Commission. For this very reason, regulation through the

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(Footnote Continued)

regulations is not necessarily impugned by any and all improper conduct in the past. The character and severity of violations, the circumstances under which they occurred, the ultimate disposition of any proceedings, and the subsequent passage of time without recurrence may all be relevant factors in assessing their significance. (Order 82-2-27 at 4), See also Application of Trans-Panama, S.A., Order 82-9-62. (Cited in Regent Airlines Fitness Investigation, Docket Number 40813, July 9, 1984, Civil Aeronautics Board, Initial Decision, pp. 125-126, which was withdrawn prior to consideration by the full CAB).

Thus, the key area of concern to the federal airline regulatory authorities is the ability of the applicant to comply with the Federal Aviation Act and other related laws and regulations. While regulatory compliance is a factor to be considered in judging character under the Casino Control Act, it is not a substitute for the character standard.

licensing process would be in the interest of the public and would further the policies of the Casino Control Act. This application must therefore be denied.

NEW JERSEY CASINO CONTROL COMMISSION

By: _____
E. Kenneth Burdge, Vice Chairman

_____
Carl Zeitz, Commissioner

_____
Joel R. Jacobson, Commissioner

_____
Valerie Armstrong, Commissioner

Dated: August 5, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 82-EA-231,
83-171
OAL DOCKET NO. CCC 4775-84
APPLICATION NO. 26417-21
REGISTRATION NO. 19222-40

IN THE MATTER OF THE APPLICATION OF JOHN GOOLSBY, III, FOR A CASINO EMPLOYEE LICENSE AND STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. JOHN GOOLSBY, III, Respondent.	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 3, 1984, recommending that the casino employee license application of John Goolsby be denied and that his casino hotel employee registration be revoked; and no exceptions having been filed to the Initial Decision; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of January 23, 1985, to reject certain conclusions of law contained in the Initial Decision and to deny the casino employee license and revoke the registration held by the respondent,

IT IS on this 7th day of February 1985, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is modified as follows:

1. The conclusion of law that the burden of proof is on the respondent to show that an offense or offenses render the respondent's registration inimical to the policies of the Casino Control Act or casino operations is rejected. In revocation cases, the burden is on the Division to show by a fair preponderance of the evidence that an individual is disqualified. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (1979).

2. The Commission finds that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) based upon the respondent's 1982 conviction for theft by deception (third degree) in violation of N.J.S.A. 2C:20-4; and

3. In light of the finding of disqualification pursuant to N.J.S.A. 5:12-86(c)(1), the finding that the respondent's criminal conduct also disqualifies him pursuant to N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary for the final disposition of the case.

IT IS FURTHER ORDERED that the casino employee license application of John Goolsby, III, be and hereby is denied and the casino hotel employee registration held by John Goolsby, III, be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that John Goolsby, III, is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon John Goolsby, III, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4775-84

(Remand of CCC 10039-83)

AGENCY DKT. NOS. 83-171 and 82-EA-231

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,

v.

JOHN GOOLSBY, III,
Respondent.

Anthony V. D'Elia, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

John Goolsby, III, respondent, pro se

Record Closed: October 18, 1984 Decided: December 3, 1984

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (hereinafter referred to as "Division") with the Casino Control Commission on May 10, 1983, seeking the revocation of the respondent's casino hotel employee registration, as well as the recommendation of the Division that the respondent not be granted a casino employee license (craps dealer) for the reasons set forth in its letter to the Casino Control Commission, dated October 1, 1982. The respondent requested hearings regarding both matters and the combined matter was transferred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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The matter was initially scheduled for a prehearing conference on February 15, 1984. On that day, the respondent failed to appear and did not respond to this office's written request for an explanation of his non-appearance. By order dated April 4, 1984, Administrative Law Judge Joseph F. Fidler dismissed the matter based on his conclusion that Mr. Goolsby had abandoned his request for a hearing. The Casino Control Commission accepted Mr. Goolsby's explanation regarding his non-appearance and by order, dated June 28, 1984, remanded the matter to the Office of Administrative Law.

At the prehearing conference held before the undersigned on August 14, 1984, the parties agreed that the issues are:

A. Whether the respondent is disqualified from licensure and/or registration pursuant to N.J.S.A. 5:12-86c due to certain alleged criminal convictions.

B. Whether the respondent's action relating to the alleged criminal offenses makes his continued registration and/or his licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

C. Whether the respondent is disqualified from licensure as a casino employee for his failure to disclose certain alleged criminal convictions, pursuant to N.J.S.A. 5:12-86b.

D. Whether the respondent can establish his reputation for good character, honesty, and integrity as required by N.J.S.A. 5:12-89b(2) for licensure as a casino employee.

E. Whether the respondent can establish that he has been rehabilitated as provided by N.J.S.A. 5:12-90h and 91d.

At the hearing, which took place on October 18, 1984, Deputy Attorney General D'Elia indicated that the Division would not pursue Issue C as identified above. Mr. D'Elia stated that although Mr. Goolsby did not list all of his arrests and convictions on his Personal History Disclosure Form-2 (P-2), he admitted to Ronald E. Rauer, the Division's Investigator assigned to the matter, that he had listed only those arrests and convictions that he could specifically recall.

Based on the testimony and exhibits admitted into evidence, I **FIND** that the facts in this matter are not in dispute and are as set forth below.

1. On September 30, 1969, Mr. Goolsby was arrested in Bridgeton, New Jersey, for forgery based on the allegation that he had signed his brother's name on three checks for a total amount of $87.50. Mr. Goolsby was convicted of this charge and spent four months in jail. As to this offense, Mr. Goolsby stated that he did not get along with this brother and that he signed his name on the checks since he needed the money.

2. On May 9, 1970, Mr. Goolsby was arrested in Bridgeton, New Jersey for assault based on the allegation that he and Clarence Brown had grabbed Delmas White and took about $20.00 (P-3). This matter was dismissed. According to Mr. Goolsby, he knew Mr. White and on May 9, 1970, he had asked Mr. White for money to buy liquor. When Mr. White refused, Mr. Goolsby grabbed and pushed him because he knew Mr. White had the money.

3. On June 29, 1970, Mr. Goolsby was arrested in Bridgeton, New Jersey, and was charged with armed robbery based on the allegation that he had robbed George Kelly at knifepoint (P-4). Mr. Goolsby was found not guilty of this offense. According to Mr. Goolsby, he and Clarence Brown offered Mr. Kelly a ride home and when Mr. Kelly started to act crazy, Mr. Brown pushed Mr. Kelly out of the car and left him standing him the road. Mr. Goolsby denied that either he or Mr. Brown robbed Mr. Kelly or threatened him with a knife.

4. On September 19, 1970, Mr. Goolsby was arrested in Bridgeton, New Jersey, and was charged with assault with a deadly weapon based on the allegations that he and his brother had beaten and robbed John White of $200 after leaving a bar (P-5). Mr. Goolsby was convicted of this offense and was given a sentence of three to five years in the New Jersey State Prison. According to Mr. Goolsby, he was working as a bouncer at the bar and there was gambling outside of the bar. Mr. Goolsby stated that Mr. White, his brother-in-law, started the fight and later accused him of taking the money that he had lost while gambling prior to the fight. Mr. Goolsby admitted that he participated in the fight but denied that he had taken any money.

5. On November 23, 1970, Mr. Goolsby was arrested in Bridgeton, New Jersey, and was charged with forgery and fraud based on the allegation that he had tried to get money from a Mr. Sistruck's bank account (P-6). Mr. Goolsby pled guilty to the offense, was convicted and was sentenced to 60 days in the county jail. As to this offense, Mr. Goolsby stated that Mr. Sistruck's son had given him his father's bank card and asked him to withdraw some money for him. Mr. Goolsby was aware that it was improper for him to try to withdraw another person's money; however, he did it as a favor to the son. After he was arrested, Mr. Goolsby did not tell the police about the son's involvement since he did not want to get the son in trouble.

6. On November 25, 1970, Mr. Goolsby was arrested for two counts of fraud in Bridgeton, New Jersey, and was sentenced to 60 days in the county jail for each count.

7. On February 1, 1971, Mr. Goolsby was arrested in Bridgeton, New Jersey, for forgery and the grand jury returned a no bill on the charge.

8. On August 25, 1973, Mr. Goolsby was arrested in Bridgeton, New Jersey, for robbery and aggravated assault and battery based on the allegation that he and two companions had attacked and had taken $40 from Joseph Appleton outside of a bar (P-7). Mr. Goolsby was convicted of the offenses, was sentenced to four months in the county jail and was placed on probation for four years. According to Mr. Goolsby, he was involved in the fight but denied that he had taken any money. Mr. Goolsby stated that he was convicted because the other persons involved in the fight placed the responsibility on him.

9. On June 1, 1974, Mr. Goolsby was arrested in Bridgeton, New Jersey for attempted rape and for assault and battery (P-8). The charge was downgraded and Mr. Goolsby was convicted of simple assault and battery, and he was fined $150 and $20 in court costs. According to Mr. Goolsby, he picked up his girl friend, Gloria Johnson, after she finished working as a singer in a bar and they went to another bar. He stated that he took her

to a friend's house where they spent the night. When he returned Ms. Johnson to her home, her mother was angry and filed the complaint. Mr. Goolsby stated that at the time of the incident his girl friend was either 18 or 19 years old. After Mr. Goolsby presented his side to the police, the charges against him were downgraded. Mr. Goolsby admitted that he was convicted of simple assault and battery, but he denied that he held his girl friend at gunpoint or that he had threatened her mother.

10. On October 15, 1976, Mr. Goolsby was arrested in Atlantic City, New Jersey, for the possession of stolen property based on the allegation that he and another person had used a vehicle without the permission of the owner (P-9). The charge was downgraded to the unauthorized use of a vehicle and Mr. Goolsby was convicted and was given a six-month suspended sentence, was fined $200 and was placed on probation for one year. According to Mr. Goolsby, he was offered a ride by a friend and he was unaware that the vehicle was stolen. After his friend had failed to stop at a stop sign, a police vehicle started to follow them and when the driver tried to lose the police vehicle, he went up an embankment. The driver started to run away on foot but he was caught by the police. Mr. Goolsby stated that he stayed with the car because he felt he had done nothing wrong; however, he was later convicted of "taking a joy ride."

11. On August 28, 1977, Mr. Goolsby was arrested in Atlantic City, New Jersey, for assault and battery based on the allegation that he had a fight with a fellow employee. Mr. Goolsby was found guilty and was fined $50. According to Mr. Goolsby, while he was employed as a bell captain at the Lafayette Motor Inn, an employee hit him with a luggage cart and he pushed the cart and struck down the employee.

12. On December 30, 1981, Mr. Goolsby was arrested for the possession of stolen property, forgery and the unlawful use of a credit card (P-10). Mr. Goolsby was convicted, was required to make restitution of approximately $1,000, was given a six-month suspended sentence and was placed on probation for one year. Mr. Goolsby is still paying the restitution in installment payments and currently owes approximately

$500. According to Mr. Goolsby, his girl friend had given him the gas credit cards to use because he was driving her to various places and he thought she had the right to use the cards. Mr. Goolsby purchased approximately $1,000 worth of gasoline with these cards.

13. In October 1981, Mr. Goolsby was arrested based on the complaint of the New Jersey Department of Labor & Industry that he had fraudently received unemployment benefits while employed (P-1). Mr. Goolsby was indicted and convicted of unemployment fraud, a violation of N.J.S.A. 2A:111-3, and he was sentenced to 90 days in the county jail and ordered to make restitution (P-1). According to Mr. Goolsby, he received approximately $7,600 in unemployment benefits while employed, is paying the amount of the restitution in installment payments and currently owes approximately $2,900. Mr. Goolsby admitted that he did not report the fact that he had obtained a job and continued to work and collect unemployment benefits because he needed the money at the time.

On his own behalf, Mr. Goolsby stated that at the time of the hearing he was 34 years old and was unemployed. Prior to September 3, 1984, Mr. Goolsby was employed by the Lafayette Motor Inn. Mr. Goolsby had started to work for the Lafayette Motor Inn as a bell boy in 1981, was later promoted to bell captain, and then he became the person in charge of the parking lot at night. Because there was a reduction in business after Labor Day, Mr. Goolsby was laid off as of September 3, 1984, and he has been unsuccessful in his attempt to obtain another job. Mr. Goolsby obtained his registration as a casino hotel employee since, he hoped to get a job as either a bellman or parking lot attendant. Mr. Goolsby has been unable to obtain a position with a casino because of this matter.

Mr. Goolsby stated that he has four children and that he helps to support his children when he is employed. Currently Mr. Goolsby is living with his step-mother and pays her rent whenever he can.

According to Mr. Goolsby, his lifestyle changed when his father died in 1981. Mr. Goolsby stated that he no longer associates with many of the people involved in his prior criminal activities and that he now spends his evenings either watching television

and playing cards for fun (there are no money bets) with friends. Mr. Goolsby stated that he no longer drinks any beer and that in the past he would get high if he drank two beers. Mr. Goolsby stated that he wants to improve himself and that he has successfully completed the casino craps dealer course. Mr. Goolsby stated that he thought he had revealed all of his prior arrests and convictions when he filled out the Disclosure Form (P-2).

In closing, Mr. D'Elia stated that Mr. Goolsby's conviction for unemployment fraud was a statutory disqualifier and that Mr. Goolsby has not shown that he has been rehabilitated. In addition, Mr. D'Elia argued that Mr. Goolsby has not shown by clear and convincing evidence that he has the necessary reputation for good character, honesty and integrity required by N.J.S.A. 5:12-89b(2) for licensure, and that he has not shown that his continued registration and/or licensure would not be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c4.

Mr. D'Elia noted that violence was involved with a number of the criminal charges brought against Mr. Goolsby and question the credibility of Mr. Goolsby's explanation as to some of the charges filed against him. Specifically, he questioned whether Mr. Goolsby would have allowed himself to be convicted of using Mr. Sistruck's bank card without mentioning Mr. Sistruck's son's involvement. Although there is reason to question some of the statements made by Mr. Goolsby, in absence of any conflicting evidence, I have accepted his explanation regarding the circumstances surrounding his various arrests and convictions.

Based on the facts, I **CONCLUDE** that the Division has shown that Mr. Goolsby was convicted of a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c.

The Casino Control Act provides that a person can overcome a statutory disqualifier against registration and/or licensure by affirmatively demonstrating his or her rehabilitation and the law sets forth certain criteria to be considered in determining whether or not a person has been rehabilitated, N.J.S.A. 5:12-90h and 91d. Having reviewed the facts in this matter, I **CONCLUDE** that Mr. Goolsby has not shown by clear and convincing evidence that he has achieved the level of rehabilitation necessary for his continued registration or for licensure as a casino employee. Although Mr. Goolsby

apparently has not been involved in any criminal activities since December 30, 1981, insufficient time has passed and there has been an insufficient showing of a change in lifestyle to warrant a conclusion that he has been rehabilitated.

Further, I **CONCLUDE** that Mr. Goolsby has not shown that his continued registration and/or licensure would not be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c4, nor has he established that he has a reputation for good character, honesty and integrity, which is necessary for licensure as a casino employee, pursuant to N.J.S.A. 5:12-89b2.

Therefore, I **ORDER** that the casino hotel employee registration of John Goolsby, III be **REVOKED** and that his application for licensure as a casino employee be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 3, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

December 6, 1984
DATE

Elizabeth J. Lozzi
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBITS ADMITTED INTO EVIDENCE FOR THE PETITIONER:

P-1 Indictment filed against John Goolsby and the dispensation on the indictment

P-2 Personal History Disclosure Form-2 submitted by John Goolsby

P-3 Arrest Report, dated May 9, 1970 and Offense Report, dated May 9, 1970

P-4 Investigation Report signed by Trooper William E. Heckman of the New Jersey State Police, dated June 29, 1970; Supplemental Investigation Report, dated July 21, 1970, and Arrest Report, dated June 29, 1970

P-5 Offense Report, dated September 19, 1970, and Arrest Report, dated September 19, 1970

P-6 Report regarding the arrest of Mr. Goolsby on November 23, 1970

P-7 New Jersey State Police Investigation Report, dated August 25, 1973, the Supplemental Investigation Report, dated August 25, 1973, and the Arrest Report, dated August 25, 1973.

P-8 Arrest Report, dated June 1, 1974 and Offense Report, dated May 26, 1974

P-9 Atlantic City Police Department Arrest Report, dated October 15, 1976, and the Vehicle Report, dated October 15, 1976.

P-10 Bridgeton Police Department Investigation Report, signed by Patrolman Robert L. Parks, Jr., dated December 30, 1981

WITNESSES

FOR THE PETITIONER:

Ronald E. Rauer

FOR THE RESPONDENT:

John Goolsby, III

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-368
OAL DOCKET NO. CCC 3752-84
REGISTRATION NO. 41559-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
KENNETH L. GREEN,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 13, 1984, recommending that the respondent's casino hotel employee registration be revoked; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of January 30, 1985, to affirm and adopt the said Initial Decision and to revoke the respondent's casino hotel employee registration, and the respondent having petitioned the Commission on January 31, 1985, to reconsider its decision, and the Commission, after considering the arguments of the respondent, having resolved at its public meeting of February 13, 1985, to waive the disqualification pursuant to N.J.S.A. 5:12-91(e), and to reinstate the respondent's casino hotel employee registration,

IT IS on this 27th day of February 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be modified as follows:

1. The recommendation that the respondent's casino hotel employee registration be revoked is rejected. The Commission finds that, consistent with the policies of the Act, the interests of justice require that the respondent's disqualification under N.J.S.A. 5:12-86(c)(1) be waived pursuant to N.J.S.A. 5:12-91(e). This finding is in consideration of the circumstances surrounding the commission of the offense, the passage of time since the offense, respondent's regular payments of restitution and his continued employment since the offense.

IT IS FURTHER ORDERED that the respondent be and hereby is found disqualified based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the respondent's disqualification be and hereby is waived pursuant to N.J.S.A. 5:12-91(e); and

IT IS FURTHER ORDERED that the Commission's Order of November 10, 1983, suspending the casino hotel employee registration of Kenneth L. Green be and hereby is vacated; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Kenneth L. Green, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3752-84

AGENCY DKT. NO. 83-368

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

KENNETH L. GREEN,

Respondent.

Paul Vagianos, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; William E. Mountford, Jr., Deputy Attorney General, at the prehearing conference)

Kenneth L. Green, respondent, pro se

Record Closed: October 23, 1984 Decided: December 12, 1984

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Kenneth L. Green, respondent. The Division alleged that Mr. Green had committed various criminal offenses, for which the Division seeks revocation of the respondent's casino hotel employee registration, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on October 25, 1983. On November 10, 1983, the Commission ordered the suspension of the respondent's casino hotel employee registration pending final disposition of the matter. By letter filed with the Commission on April 5, 1984, the respondent requested a hearing. On May 22, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 20, 1984, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Green is currently 23 years of age. He is a 1980 graduate of Camden High School.

On June 30, 1980, the respondent and another individual were arrested by the Willingboro Police Department and were charged with a violation of N.J.S.A. 2C:20-7, possession of a stolen motorcycle (P-5 and P-6). On December 1, 1980, the respondent was indicted by a Burlington County Grand Jury for a violation of N.J.S.A. 2C:20-7, receipt of stolen property with a value in excess of $500, third degree (P-7). On March 2, 1981, the respondent retracted his prior plea of not guilty and entered a guilty plea to the indictment. On April 16, 1981, the respondent was sentenced to probation for a period of three years, a fine of $500 and ordered to pay $25 to the Violent Crimes Compensation Board. The respondent completed his sentence satisfactorily. The respondent testified that he had no knowledge that the motorcycle was stolen at the time that he purchased it.

For approximately an 11-month period during 1981, the applicant was employed by World International Hotels in Atlantic City as a clerk.

For approximately a two-year period during 1982 and 1983, the applicant was employed as a relief cook by Claridge at Park Place, Inc. (Claridge). During this period he held casino hotel employee registration number 41559-40. The respondent's employment was satisfactory in all respects. On November 10, 1983, the Commission suspended the

respondent's casino hotel employee registration pending the outcome of these proceedings. Accordingly, his employment at the Claridge was terminated in December 1983.

The applicant was involved in an incident on July 9, 1983, which constitutes the basis for this action. By reason of statements made on July 10, 1983, by Walter Bennett, the purported victim, a complaint was made against the applicant on July 10, 1983, wherein he was charged with alleged violations of N.J.S.A. 2C:15-1, robbery in the first degree, and N.J.S.A. 2C:12-1b(4), aggravated assault (P-2). The circumstances underlying the incident were in dispute and will be discussed, infra. The respondent was arrested on July 11, 1983 (P-2). On September 28, 1983, the respondent was indicted by a Camden County Grand Jury and was charged with violations of N.J.S.A. 2C:15-1, robbery-first degree; N.J.S.A. 2C:12-1b(4), aggravated assault-pointing a firearm; N.J.S.A. 2C:39-4, possession of a weapon for an unlawful purpose; N.J.S.A. 2C:39-5b possession of a handgun; N.J.S.A. 2C:12-3, terroristic threats; and N.J.S.A. 2C:20-3, theft by unlawful taking or disposition (P-3). On October 13, 1983, the respondent entered a plea of not guilty to the indictment (P-4). On April 2, 1984, the respondent retracted his plea of not guilty and entered a plea of guilty to count six, N.J.S.A. 2C:20-3, theft by unlawful taking. On July 6, 1984, the respondent was placed on probation for a period of three years with the conditions that he make restitution in the amount of $500 and not have any further contact with the victim. Further, the respondent was ordered to make payment of $25 to the Violent Crimes Compensation Board. His probation was subject to termination at the end of the first year in the event of compliance with all conditions including payment of the fine. The respondent has paid $40 of the fine. Counts one through five of the indictment were dismissed.

The respondent has had sporadic part-time employment since he left the Claridge. However, in late October 1984 he was scheduled to commence employment as a cook at Francine's Restaurant in Atlantic City.

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident of July 9, 1983, and the respondent's conduct since that date.

Aside from the respondent's conviction for a violation of N.J.S.A. 2C:20-3, theft by unlawful taking or disposition, the Division charged him with violations of the

remaining counts of the indictment. The Division's proofs consisted of a Major Incident Report prepared by Detective Crowder of the Camden Police Department on July 11, 1983, which report was based entirely upon statements made by the purported victim (P-1). The Division did not produce Mr. Bennett to testify on its behalf. It was not possible to assess the reliability of the statements contained in the report. Accordingly, the report had no evidential value.

Mr. Green testified on his own behalf and described the circumstances underlying the incident. Mr. Bennett was a former co-employee of the respondent at the Claridge. On or about June 12, 1983, and again on or about July 8, 1984, Mr. Bennett visited the respondent's residence and admired the respondent's stereo. Between 3:30 and 4:00 a.m. on July 9, 1983, and while the respondent was at work at the Claridge, he received a telephone call from Mr. Bennett's wife who stated that Mr. Bennett wanted to meet with the respondent when he got off from work at 7:00 a.m. Mr. Green declined. When the respondent returned home at approximately 8:50 a.m., he discovered that his apartment was unlocked and that his stereo and telephone had been taken. Upon inquiry of a neighbor, he learned that a person driving a burgundy and white Oldsmobile 98 had been observed at the apartment. Mr. Green then related the incident to the telephone call that he had received from Mr. Bennett's wife. The respondent went to the Bennett residence, where he observed his stolen telephone. Nevertheless, Mr. Bennett denied that he had taken the property. Ultimately, Mr. Bennett admitted taking the telephone and stereo from the respondent's apartment. The purpose for the theft was to obtain money for a drug habit. Mr. Bennett stated that he had sold the stereo. Mr. Green reclaimed his telephone. The respondent then returned and demanded that Mr. Bennett take him to meet with the person who had purchased the stereo. However, the person identified by Mr. Bennett as the purchaser of the stereo did not have the respondent's stereo. Mr. Green and Mr. Bennett got into an argument and a each shoved the other. After they returned to Mr. Bennett's apartment, the respondent demanded security for his stolen property. The respondent testified that Mr. Bennett voluntarily gave his car, including title, registration, insurance card and two sets of keys, to the respondent. At no time did the respondent possess a weapon.

Mr. Green also testified to the circumstances underlying his acceptance of the a plea bargain agreement. The respondent agreed to plea to count six, a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, third degree, upon the advice of counsel and in contemplation of the risks associated with going to trial, i.e., possible incarceration. The respondent was aware of the potential impact upon his casino hotel employee registration at the time he agreed to the plea bargain.

The respondent also testified that he has not been involved in any subsequent misconduct. In addition, he wishes to retain his registration for better employment opportunities.

Aside from the police report which recited Mr. Bennett's version of the incident (P-1), the Division did not offer any rebuttal to the respondent's testimony. As stated, exhibit P-1 had no evidential value. Accordingly, it is essential to assess the respondent's credibility. Initially, Mr. Green's position in this matter must be recognized. He is the holder of a casino hotel employee registration and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from my observations of the respondent's demeanor, the plausibility of his testimony, the fact that the five remaining charges in the indictment were dismissed and the absence of any other proofs to support the Division's accusations, I am persuaded to believe that the respondent testified truthfully. His testimony was straightforward, consistent and believable. The respondent acknowledged the extent of his wrongdoing by virtue of his guilty plea and has accepted responsibility therefore. In the final analysis I am persuaded to accept his testimony in all respects.

After consideration of the entire record in this matter, I further **FIND** that:

1. The respondent's testimony concerning the incident of July 9, 1983, and the circumstances underlying his acceptance of the a plea bargain agreement, was believable and persuasive.

2. The respondent's testimony is accepted in full and is incorporated herein as though fully set forth at length.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2 of the New Jersey statutes be disqualified from licensure. The Division contention that Mr. Green's conviction is a statutory disqualifier listed under section 86c(1) of the Act was not in dispute.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction disqualifies him from holding a casino hotel employee registration, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(1)

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. The Division alleged under section 86c(1) that the respondent's conduct on July 9, 1983, constituted violations of N.J.S.A. 2C:15-1, robbery; N.J.S.A. 2C:12-1b(4), aggravated assault -pointing a firearm; N.J.S.A. 2C:39-4, possession of a weapon for an unlawful purpose; N.J.S.A. 2C:39-5b, possession of a handgun; and N.J.S.A. 2C:12-3, terroristic threats.

The Division failed to establish the elements of the charged offenses and produced no evidence of the commission thereof. In addition, the respondent's testimony established that he did not commit any of the charged violations.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, a violation of N.J.S.A. 5:12-86c(1) by means of section 86g.

(C) N.J.S.A. 5:12-91d

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against and/or continued registration by

affirmatively demonstrating his or her rehabilitaiton. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitaiton is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense occurred;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whenther the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prision or in the community, counseling, or phychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Mr. Green is registered as a casino hotel employee and was, for a period of two years, employed by the Claridge as a cook. As such, he would have no responsibilities for actual gaming activities, nor would he have substantial contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial patron contact.

Second, the respondent was convicted of theft by unlawful taking, third degree. This is a serious offense.

Third, the respondent testified to the circumstances underlying the incident. Although the circumstances cannot be construed to justify the respondent's misconduct, they do serve to mitigate the seriousness thereof. Nevertheless, it is evident that the respondent knew that taking the car from Mr. Bennett was unlawful.

Fourth, the incident occurred on July 9, 1983, approximately one year ago.

Fifth, at the time of the offense Mr. Green was 22 years of age. However, there was no evidence that his misconduct was due to immaturity.

Sixth, respondent's misconduct was not an isolated incident as he was the subject of a criminal action concerning the receipt of stolen property, which occurred in June 1980. However, the offenses appear to be unrelated, with the exception that the respondent's prior misconduct should have made him more conscious and careful in his subsequent conduct.

Seventh, there were no social conditions which contributed to the offense.

Eighth, Mr. Green has demonstrated some rehabilitation. He pled guilty to count six of the indictment and has accepted responsibility for his misconduct in that regard. However, he has not completed his probationary period and has made only a small payment on his fine. Further, he has only recently secured full time employment. Although the respondent has taken positive steps toward establishing rehabilitation, given the recent date of the offense and the recent date of sentence, as well as the fact that the offense was not isolated in nature, an insufficient amount of time has passed for the respondent to establish his rehabilitation.

I **CONCLUDE** that Mr. Green has failed to establish, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(D) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imosed against a holder of a registration who has committed a violation of

the Act. Here the Division seeks revocation of the respondent's registration. Given the fact that the respondent cannot demonstrate his rehabilitation from a listed disqualifier, the respondent's registration must be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the casino hotel employee registration held by Kenneth L. Green be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 12, 1984
DATE

Richard L. Voliva, J.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

December 13, 1984
DATE

Bernadette T. Fazio
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 17 1984
DATE

Ronald L. Parker/sh
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Camden Police Department - Major Incident Report, prepared by Detective O. Crowder, July 11, 1983 (2 pages)

P-2 The State of New Jersey v. Kenneth Green, Camden Municipal Court, Complaint, July 10, 1983

P-3 State of New Jersey v. Kenneth L. Green, Superior Court of New Jersey, Law Division - Criminal, Camden County, Indictment Number I-2230-983 (9 pages)

P-4 State of New Jersey v. Kenneth Green, Superior Court of New Jersey, Camden County, Law Division - Criminal, Judgment of Conviction, July 6, 1984 (4 pages)

P-5 County of Burlington - Uniform Arrest Report, Kenneth L. Green, June 30, 1980; Uniform Investigation Report, June 30, 1980 (3 pages)

P-6 The State of New Jersey v. Kenneth Lee Green, Willingboro Municipal Court, Complaint, June 30, 1980

P-7 The State of New Jersey v. Kenneth Green, Superior Court of New Jersey, Law Division - Criminal, Burlington County, Indictment No. I-230-80, filed December 1, 1980; Judgment of Conviction, April 16, 1981 (5 pages)

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Kenneth L. Green

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION NO. 069403

IN THE MATTER OF PETITION OF :
HARRAH'S ATLANTIC CITY, INC. :
FOR A DECLARATORY RULING :
CONCERNING COMPUTER ACCESS :

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

WALTER N. READ, CHAIRMAN
E. KENNETH BURDGE, VICE-CHAIRMAN
VALERIE H. ARMSTRONG, COMMISSIONER
CARL ZEITZ, COMMISSIONER
JOEL R. JACOBSON, COMMISSIONER

APPEARANCES:

For Petitioners and Intervenors:

Herbert Miller, Esq.

For the Division of Gaming Enforcement:

Fredric E. Gushin, Deputy Attorney General

For the Casino Control Commission:

John R. Zimmerman, Senior Assistant Counsel
Steven M. Ingis, Assistant Counsel

This matter is brought before the Commission pursuant to a petition by Harrah's Atlantic City, Inc., seeking a declaratory ruling that the Division of Gaming Enforcement's (Division's) proposal for access to Harrah's computer systems violates both the Fourth Amendment's prohibition against unreasonable searches and seizures and the Casino Control Act. On February 20, 1985, the Commission heard argument with respect to this petition. At that time, the Commission granted an application by Bally's Park Place, Inc. to consolidate a similar petition with this proceeding. We also granted the motion filed jointly by the other casino licensees to intervene in this case.[1]

Our determination of the legal questions raised by this petition is based upon and limited by the representations in the Division's computer access proposal. The Division has developed procedures for obtaining access to information stored in the casinos' electronic data processing (EDP) systems which would parallel the way in which the Division currently secures information from manual filing systems. The Division seeks access to only the following categories of information stored in the computers: credit files and transaction data, complimentary services, player ratings, personnel systems and accounting data.

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1. On February 20 there were only four commissioners. Commissioner Armstrong subsequently joined the Commission. With the consent of the parties, Commissioner Armstrong participated in the decision rendered on May 8, 1985, which is the subject of this opinion.

All of this information is now accessible to the Division through manual records.

The Division's proposed methodology for obtaining access to computer-stored information is composed of four elements.

First the Division seeks "inquiry only" access to computer-stored information. Access to the computer system would be afforded only to authorized Division personnel who would identify themselves to a casino representative and would produce verifying credentials. These agents would then utilize an access code limited to an inquiry only capability. The Division represents that, pursuant to this access code, it would not have the ability to alter any of the information stored within the casino's data bank, or to enter any information therein.

The Division has also indicated that it is willing to permit casino licensees to train selected Division personnel in the use of computer systems. Moreover, access would be limited to personnel who have a need to secure the information contained within the systems in conjunction with authorized investigations, reviews and audits.

Second, the Division seeks the ability to obtain "hard copy" printouts of the computer-stored information.

Third, to assure an atmosphere of reasonable privacy to conduct its review of computer-stored material, the Division desires direct access to a computer terminal rather than indirect access through a casino employee.

Fourth, the Division emphasizes that, in order to protect the integrity of its investigations and its investigatory techniques, it must insure that a licensee will not track specific Division inquiries of its computer system. However, the Division acknowledges that there may be some type of limited audit trail by which casino licensees can record certain information relative to the Division inquiries. In this regard, the Division has no objection to the following information being recorded by casino licensees with respect to the Division's access to the computer systems: (1) time on the EDP system, (2) person utilizing the system, (3) general category of material examined, (4) time off the EDP system, and (5) date of the request. However, the Division's proposal would preclude the tracking of specific information, such as the particular files reviewed.

Our ruling herein is expressly limited to the Division's right to obtain access to the specific material requested in the manner described by the Division. Since the Division has specified the material to which it seeks access, it is unnecessary to render a decision at this time as to the legitimacy of similar access to other computer-stored material. Thus, the dissent's concern, that there may be some information stored on computers which should be shielded from ready disclosure to the Division, is premature since the types of material being sought here are clearly appropriate for Division review and are subject to routine inspection presently.

In making a determination on the legal issues raised by the petition, we have not drawn any conclusions as to whether

the Division's proposal is technically feasible. In this regard, we note that the issue of access by the Division to computerized information has been in contest for several years. The parties disagree with respect to the underlying facts of this case, including the practicability of the Division's proposed access technique. Attempts to resolve this matter by stipulation have proved futile.

We recognize that it may become necessary to conduct factual hearings at a later date to focus on an individual licensee's unique concerns regarding implementation of computer access. However, those concerns are not necessarily industry wide, and may vary depending on the computer system utilized by the respective licensees. Since the legal issues raised herein apply to the entire industry, and may be disposed of without resorting to evidentiary hearings, it is appropriate and more efficient to first resolve this aspect of the question. The legal challenge asserted by the petitions may and should be addressed without further delay.

Petitioners contend that the Division's proposal provides almost unlimited discretion to Division investigators as to what records are to be searched, while at the same time precluding the licensees from being able to effectively track the information being examined. Characterizing such an inspection scheme as both a warrantless and witnessless search, they argue that the Division's proposal is unconstitutionally broad in scope. Petitioners maintain that indirect access to

the computer systems through a casino employee is necessary to insure the functioning of the system and also to enable the licensees to have knowledge of the specific information requested by the Division. The Division asserts that its request for direct access is made pursuant to its regulatory authority and is in compliance with constitutional mandates.

The United States Supreme Court has held that the Fourth Amendment's prohibition against unreasonable searches applies to administrative inspections of private commercial property. Marshall v. Barlow's Inc., 436 U.S. 307 (1978); Camara v. Municipal Court, 387 U.S. 523 (1967). Thus, warrants are constitutionally required for most administrative searches. Id. However, legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment. Donovan v. Dewey, 452 U.S. 594, 598 (1982).

The Supreme Court has limited the exceptions to the warrant requirement for administrative searches to certain carefully defined classes of cases. Marshall v. Barlow's, Inc., supra. at 312-313. An exception has been recognized for "pervasively regulated" businesses, United States v. Biswell, 406 U.S. 311, 316 (1972) (firearms), or industries "long subject to close supervision and inspection," Colonnade Catering Corp. v. U.S., 397 U.S. 72, 77 (1970) (liquor). In Colonnade, the Court held that an establishment licensed to sell liquor could be searched by an inspector without a warrant. Observing the

long history of close government supervision and inspection of the liquor industry, the Court ruled that Congress had broad authority to determine standards of reasonableness for searches and seizures in the enforcement of liquor regulations.

Similarly, in Biswell, the Court held that a Treasury agent may make a warrantless search of the premises of a licensed gun dealer. Although firearms traffic did not have as long a history of government control as the liquor industry, the Court found that an important federal interest in preventing violent crime was at stake and that close scrutiny through inspection was a crucial part of the regulatory scheme. The Court recognized that a dealer engaged in such a pervasively regulated business did so with the knowledge that his business records and inventory would be subject to inspection.

Subsequently, in Marshall v. Barlow's, Inc., supra, the Supreme Court clarified the administrative search exception, stating that the distinguishing element giving rise to the exception in pervasively regulated "Biswell" businesses and traditionally regulated "Colonnade" industries is the awareness and expectation by a person entering such a business that he is subjecting himself to government supervision and regulation. The Court explained:

> Certain industries have such a history of government oversight that no reasonable expectation of privacy...could exist for a proprietor over the stock of such an enterprise...[W]hen an entrepeneur embarks upon such a business, he has voluntarily chosen to submit himself to a full arsenal of governmental regulation. [Marshall v.

Barlow's, Inc., supra at 313 (citations omitted).]

The Court in Barlow's held that, absent consent, a warrant was constitutionally required in order to conduct administrative inspections under a section of the Occupational Safety and Health Act, 29 U.S.C. §657(a). The Court found that the provision authorizing administrative searches provided almost unbridled discretion to government officers as to when to search and whose property to search. 436 U.S. at 323. The Court emphasized that the non-consenting owner would have little real expectation that his business would be subject to inspection. Accordingly, the Court expressly limited its holding to the inspection provisions of the particular act in question, noting that the reasonableness of a warrantless search will depend upon the specific enforcement needs and privacy guarantees of each statute and that some statutes "apply only to a single industry, where regulations might already be so pervasive that a Colonnade-Biswell exception to the warrant requirement could apply." Id, 436 U.S. at 321.

The Colonnade-Biswell exception to the warrant requirement was reaffirmed in Donovan v. Dewey, supra. In that case, the Court held valid a provision of the federal mine safety statute that authorized warrantless inspections. Referring to Colonnade and Biswell, the Court stated:

> These decisions make clear that a warrant may not be constitutionally required when Congress has reasonably determined that warrantless searches are necessary to further a regulatory

> scheme and the federal regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes. [452 U.S. at 600.]

A regulatory statute may be sufficiently specific with respect to the manner and purpose of warrantless inspections so as to essentially provide the same protection as would a warrant requirement. Id.

Thus, the above cases hold that a statute can validly authorize warrantless searches, for specific purposes, in industries comprehensively regulated, where the commercial owner can reasonably expect such warrantless inspection as an incident of the regulation to which he is subjected. Indeed, as the Supreme Court noted in Donovan and Biswell, if the law is to be properly and effectively enforced in certain industries, unannounced and frequent inspections must be available to the enforcement authorities.

The United States Supreme Court has observed that businessmen engaging in such licensed and closely regulated enterprises accept the burdens as well as the benefits of their trade. In effect, therefore, the businessman consents to any restrictions placed upon him. Almeida - Sanchez v. United States, 413 U.S 266, 271 (1973). See also Frey v. Panza, 621 F. 2d 596 (3 Cir. 1980), cert. denied 449 U.S. 1035 (1980). This principle is most strongly illustrated by the casino industry, where the license to do business entails the right to engage in

an industry which is the most pervasively regulated, as well as the most lucrative one subject to governmental control. Thus, the designedly intrusive administrative apparatus and the costs associated therewith must be accepted by a company which elects to avail itself of the privilege of engaging in this industry.

Whether a regulatory scheme that includes warrantless inspections is reasonable under the Fourth Amendment is determined on a case-by-case basis. Marshall v. Barlow's, Inc., supra at 321. The touchstone of a decision on the legality of a warrantless administrative search is a consideration of the type of business involved, and an analysis of the pervasiveness and regularity of the applicable legislative scheme. Donovan v. Dewey, supra at 604.

Applying this approach, the New Jersey Supreme Court in the case of In re Martin, 90 N.J. 295, 310-316 (1982), upheld the warrantless inspection provisions of N.J.S.A. 5:12-79(a)(6). See also State v. Dolce, 178 N.J. Super. 275 (App. Div. 1981) (upholding warrantless searches in horseracing industry). The Supreme Court concluded in Martin that there is no question that casino gambling in New Jersey was a pervasively regulated industry that is subject to close supervision and inspection. See also Knight v. Margate, 86 N.J. 374, 381-382 (1981); In the Matter of Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341 (App. Div. 1981), aff'd. as modified, 90 N.J. 361 (1982), appeal dism., 103 S. Ct. 562 (1982).

The Court in Martin noted that the constitutional inquiry does not necessarily end upon a finding that warrantless searches are permissible pursuant to a valid regulatory scheme. Warrantless searches are themselves subject to the independent constitutional requirement of reasonableness. N.J.S.A. 5:12-79(b). They must be conducted in a manner that furthers the regulatory purposes of the Casino Control Act. The Court further stated that whether a search has been conducted in an unreasonable manner is a matter to be determined in light of the circumstances of the particular case.

In State v. Williams, 84 N.J. 217 (1980), the Court restricted the right to warrantless searches to legitimate regulatory inspections specifically related to the enforcement of liquor laws and regulations under Title 33 of New Jersey's statutes. Law enforcement officers could not search non-public areas of a licensed tavern for evidence of general criminal activity unrelated to the operation of the licensed activity without a search warrant. The scope of the search had to be limited to the regulated industry. In this way, the Court preserved valid Fourth amendment rights without impairing the regulation of a sensitive industry. Although persons doing business in a strictly regulated industry such as the liquor business had a limited expectation of privacy in the premises, they did not totally waive their Fourth Amendment rights. Id. at 225.

While corporations enjoy privacy protection under the Fourth Amendment, that protection is qualified to permit adequate policing of corporate conduct. Law enforcement agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and public interest. United States v. Morton Salt Co., 338 U.S. 632, 652 (1950); California Bankers Ass'n v. Schultz, 416 U.S. 21, 66 (1974).

As the United States Supreme Court noted in Morton Salt Co., supra at 652-653, in upholding broad investigatorial powers in the Federal Trade Commission:

> Of course a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power [citation omitted.] But it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. "The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable." Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 208 [1946]....

See also Federal Trade Commission v. American Tobacco Co., 264 U.S. 298 (1924). The cases are now numerous where warrantless administrative searches of records which are required to be maintained by statute have been upheld. See e.g., Wayne Cusimano, Inc. v. Block, 692 F. 2d 1025 (5 Cir. 1982) (produce dealer); United States v. Ackler, 690 F. 2d 70 (6 Cir. 1982) (pharmaceutical industry); Frey v. Panza, supra (construction);

U.S. Nuclear Regulatory Commission v. Radiation Technology, Inc., 519 F. Supp. 1266 (D.N.J. 1981); contra, Bionic Auto Parts & Sales, Inc. v. Fahney, 518 F. Supp 582 (N.D. Ill 1981), aff'd 721 F. 2d 1072 (7 Cir. 1982), where the Court, in the context of the auto parts industry, found a statute afforded unbridled discretion to the regulators and therefore was invalid.

An examination of the Division's request in the context of our pervasive regulatory environment reveals that it is entirely reasonable and not so intrusive as to violate the Fourth Amendment. The inquiry is within the authority of the agency, the demand is sufficiently definite, and the information sought is relevant to the agency's regulatory purpose.

Pursuant to N.J.S.A. 5:12-76, the Division is expressly obligated to conduct continuing investigations and reviews of casino operations and records to assure statutory and regulatory compliance. In order to satisfy this mandate, the Division is authorized to request information, materials and any other data from any licensee. N.J.S.A. 5:12-76(b)(8). Moreover, the Act requires the licensee to cooperate with any such investigation and to provide whatever assistance or information is required. N.J.S.A. 5:12-80(d). See also N.J.S.A. 5:12-96(e). To facilitate this investigatory obligation, the Division is afforded broad authority in section 79 of the Act to conduct warrantless inspections:

> The Division and its employees and agents, upon approval of the director,

shall have the authority, without notice and without warrant:

(1) To inspect and examine all premises wherein casino gaming is conducted; or gaming devices or equipment are manufactured, sold, distributed, or serviced; or wherein any records of such activities are prepared or maintained;

(2) To inspect all equipment and supplies in, about, upon or around such premises;

(3) To seize summarily and remove from such premises and impound any such equipment or supplies for the purposes of examination and inspection;

(4) To inspect, examine and audit all books, records, and documents pertaining to a casino licensee's operation;

(5) To seize, impound or assume physical control of any book, record, ledger, game, device, cash box and its contents, counting room or its equipment, or casino operations; and

(6) To inspect the person, and personal effects present in a casino facility licensed under this act, of any holder of a license or registration issued pursuant to this act while that person is present in a licensed casino facility. [N.J.S.A. 5:12-79(a).]

A statutorily authorized inspection program provides an adequate substitute for a warrant in terms of the certainty and regularity of its application if (1) the act clearly notifies the business operator that inspections will be performed on a regular basis, (2) the act and the regulations promulgated thereunder inform the operator about what standards must be met; and 3) the act prohibits forcible entry and provides a means by which any special Fourth Amendment interests may be accommodated. Donovan v. Dewey, supra.

In the instant case, the casino licensee would be clearly on notice that the types of records identified by the Division are subject to warrantless inspection on a routine basis. See Marshall v. Barlow's, Inc., supra. Moreover, the material sought directly relates to the Division's investigatory role with respect to overall casino operations. The inspections would occur during normal business hours, with the knowledge of authorized casino personnel. Further, the inspections would extend to the entire industry. There is no unbridled discretion as to when and whom to search, as petitioners suggest, see Marshall v. Barlow's, Inc., supra, but rather a predictable and guided regulatory presence. See Donovan v. Dewey, supra, where the Supreme Court stressed the required inspection of all mines and the specifically defined frequency of inspection. In the casino industry setting, the Division carries on continuous and ongoing investigations, thereby eliminating any possibility of an operator's uncertainty as to being inspected. In re Tufi Application, 182 N.J. Super. 631, 643 (App. Div. 1981), certif. den. 91 N.J. 189 (1982).

The magnitude of the governmental interest served by the record-keeping provisions of the Act cannot be contested. Warrantless inspections will facilitate considerably the efforts to effectively regulate the casino industry. In this regard, warrantless searches are critical to the state's need for comprehensive supervision. Donovan v. Dewey, supra.

The fact that it is a search of computer-stored records rather than hard copy material does not alter the critical fact that the Division is authorized by statute to obtain this material in furtherance of its investigatory function. The increased utilization of computers to store such records necessitates a means by which the Division may obtain access to this material to perform its investigative role. We conclude that the Division is entitled to ready and unimpeded access of computer-stored information. The searches themselves must be carried out in accordance with statutory and constitutional guidelines. N.J.S.A. 5:12-79. There is a statutory remedy for a casino to pursue in the event it believes a particular search is unduly burdensome or offensive. N.J.S.A. 5:12-63(g).[2]

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2. The dissent refers to the absence of a comparable remedy to motions to suppress evidence in criminal proceedings. The purpose of the Fourth Amendment exclusionary rule is to deter future unlawful police conduct. Its applicability to administrative proceedings is uncertain. Cf. INS v. Lopez-Mendoza, ___ S. Ct., ___, 52 U.S.L.W. 5190 (1984); United States v. Janis, 428 U.S. 433 (1976). The exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons. Its application has been restricted to those areas where its remedial objectives are most effectively served. See, e.g., United States v. Calandra, 441 U.S. 338, 348 (1974). In United States v. Janis, 428 U.S. 433 (1976), the Supreme Court established a framework for deciding in what types of proceedings application of the exclusionary rule is appropriate. The Court imposed a balancing test where the likely social benefits of excluding unlawfully seized evidence are weighed against the likely costs. We are not presently confronted with a situation requiring a decision on the admissibility of unlawfully obtained evidence.

Petitioners object that direct access will preclude them from being able to track the specific information searched. The Division agrees with this assessment and maintains that the lack of tracking capability is essential to protect the efficiency of its investigations and to preserve the confidential nature of its review of the casino industry. In this regard, we believe it is important to recognize that the Division has indicated a willingness to extend to the licensees a limited audit trail, similar to the procedure utilized with respect to manual records. The Division's proposal, therefore, does not alter the procedure currently in operation for examining or obtaining this information. We reject the contention that the licensees have a constitutional right to have specific knowledge of the material examined. On the contrary, in light of the nature of the casino industry and the need for pervasive regulation, it is undeniable that this aspect of the Division's methodology furthers the regulatory purposes of the Act. We believe that the procedures involving notice to the licensee of the type of materials examined, which procedures are currently used with respect to manual records, satisfy all constitutional requirements. The same procedures applied to computer-stored information should provide a practical solution to this problem without violating any constitutional guarantees. We conclude that there is nothing unreasonable in conducting searches under those circumstances.

Petitioners argue that the lack of effective measures to insure the confidentiality of certain material demonstrates the unreasonable nature of direct access searches. In this regard, the United States Supreme Court has recognized the difference in intrusiveness between disclosures only to state employees and disclosures to the general public. Whalen v. Roe, 429 U.S. 589, 600-602 (1977), Nixon v. A.G.S., 433 U.S., 458 (1977). The fact that measures were taken to guard against such public dissemination figured prominently in the holdings favoring disclosure to the agencies. Pursuant to N.J.S.A. 5:12-74 and N.J.A.C. 19:40-3.1 et seq., there are effective means of preserving the confidential nature of any material examined.

Petitioners maintain that the records stored in the computer, with the single exception of hotel reservations, are available on hard-copy records. They contend that the Division should not be permitted unlimited access to its computer system because of the increased likelihood that the system will be somehow damaged. This argument is not constitutional in nature, but goes more to whether the methodology requested by the Division is feasible, a matter which we reiterate is not at issue. The fact that this material is available elsewhere does not detract from the validity of a computer search. The material requested is, as petitioners acknowledge, germane to the Division's oversight of the casino industry.

It is also important to recognize that the Division is not seeking information that in any sense goes beyond a

casino licensee's operations. Petitioners' argument regarding accessibility to telephone records of hotel guests is misplaced, since such records are not encompassed within the Division's request. Compare State v. Hunt, 91 N.J. 338 (1982), with Smith v. Maryland, 442 U.S. 735 (1979). See also United States v. Miller, 425 U.S. 435, 442 (1976), and California Bankers Ass'n v. Shultz, supra at 69, which indicate that the casino would not have standing to raise the privacy claims of its patrons.[3]

For the foregoing reasons, petitioners' claim of constitutional deprivation must fail.

In addition to constitutional deprivations, petitioners contend that the Division's proposed search methodology exceeds the authority for warrantless searches established in section 79 of the Act. N.J.S.A. 5:12-79(a). They assert that the Division's only proper subject of inspection is casino operations and that the desired search will extend beyond that area. They further maintain that the requirement of the Director's approval for warrantless searches will be impossible to sustain if Division investigators are afforded direct computer access.

As we have indicated, however, the requested search is definitely in furtherance of section 79 and therefore we reject

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3. The dissent states that casino patrons do not waive their Fourth Amendment rights. However, Fourth Amendment rights are personal in nature and may not be raised vicariously. Accordingly, the fundamental doctrine of standing dictates against a casino licensee's ability to raise any potential constitutional claims of its patrons. Moreover, we are satisfied that no protected patron privacy interests are infringed by allowing access to the classes of records in issue here.

this assertion. The matters to be searched, as identified by the Division, are certainly within the Division's statutory authority. Moreover, the Director would not relinquish his approval power with respect to the warrantless searches.

Finally, petitioners argue that section 63(g) of the Act is unconstitutional. Petitioners recognize, however, that the Commission is not empowered to hold any portion of its enabling legislation unconstitutional, and they have indicated therefore that they are not seeking a ruling by the Commission that section 63(g) is void. Thus, we do not have to issue a ruling on this point. In any event, contrary to petitioners' assertions, this section does not supplant Fourth Amendment requirements but merely provides a mechanism for Commission review of complaints filed by licensees against the Division for allegedly improper investigative methods. The section is not limited to Division searches of records maintained by the licensee and is not a substitute for compliance with constitutional and statutory restrictions. Since the requested access is reasonable and lawful, the existence and purpose of section 63(g) are irrelevant.

For the aforementioned reasons, we conclude that the Division's requested search methodology and the range of records to be examined are in furtherance of the Act's regulatory policy and do not violate the Fourth Amendment or the Casino Control Act. Certainly, any party entering this industry does so with the knowledge that his business records will be subject to

inspection. We believe the proposed methodology for computer access will strike a proper balance between the regulator's goals for monitoring casino operations and the legitimate interest of the casino licensees in preserving the security and integrity of their computer systems. The petition is therefore denied.

The parties may address any technical and feasibility problems raised by the Division's requested computer access in separate discussions and proceedings. We suggest that the Division meet with the individual licensees to implement this program.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman

E. Kenneth Burdge, Commissioner

Joel R. Jacobson, Commissioner

DATED: June 7, 1985

DISSENTING OPINION OF COMMISSIONERS ARMSTRONG & ZEITZ

While we recognize the Division of Gaming Enforcement's need to access information stored on a casino licensee's computer, the method of access must be reasonable and exercised with discretion, while at the same time acknowledging the highly regulated nature of the casino industry.

The Commission's majority opinion does not adequately address the unique nature of a computer, and the infinite variety of information which may be stored on a casino licensee's electronic data processing system. Computer record storage differs substantially from the maintenance of manual records; there is a vast difference between the encyclopedic memory of a microchip and the finite space of a file cabinet and the records stored therein. A casino licensee's computer will unquestionably contain data which should be available to the Division of Gaming Enforcement. However, that same computer may also store information such as trade secrets and personal information about casino patrons, to which the Division should not have automatic unfettered access.

Notwithstanding the highly regulated nature of the casino industry and the Division's need to conduct investigations, casino licensees, as well as their patrons, have not waived their Fourth Amendment right to be protected from unlawful searches and seizures.

If evidence is unlawfully seized in a criminal proceeding, adequate legal remedies are available to protect the person whose rights have been violated, via a motion to suppress evidence. No such comparable remedy is available to a casino licensee or casino patron who has suffered a Fourth Amendment violation as a result of unlawful seizure by the Division of computer-stored information. Indeed, the current motion would permit the Division to unlawfully access information without the licensee or patron knowing that the information has been accessed. Both parties acknowledge that it will be very difficult for a licensee to track the specific information being searched by the Division, even when the licensee has been informed as to the general category of material examined. The within motion is too broad and fails to present sufficient guidelines and ground rules for constitutionally accessing computer-stored information.

The issue presented in this matter cannot be addressed adequately without a plenary hearing, during which the parties could present testimony as to the technical problems of access to information stored on a licensee's computer. The testimony would also address the Division's need to access the information without violating the Fourth Amendment rights of licensees and patrons who might be affected by a warrantless search of computer-stored information.

We recognize the perimeters of N.J.S.A. 5:12-79, and specifically note that the Division's inspection and seizure powers are

not unlimited and must pass constitutional muster. The development of more specific, yet reasonable guidelines as to what computer-stored information may be accessed by the Division and the method of access is essential to balance the Division's investigative needs by a check against Fourth Amendment violations which may occur as a result of the very general guidelines set forth in the current motion. Once such guidelines were established, any allegations of Fourth Amendment violations could adequately be addressed on a case-by-case basis.

VALERIE H. ARMSTRONG

CARL ZEITZ

DATE: June 7, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-108
OAL DOCKET NO. CCC 5572-84
APPLICATION NO. 48377-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
MARIA M. HUERTAS,	:
Respondent.	:

AMENDED FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 28, 1984, recommending that the application of Maria M. Huertas for a casino employee license be denied; and no exceptions or objections having been filed; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of February 6, 1985, to reject the Initial Decision and to grant the application.

IT IS on this 18th day of March 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected; and

IT IS FURTHER ORDERED that the application of Maria M. Huertas for a casino employee license be and hereby is granted based upon the following findings:

1. The applicant did not intentionally fail to disclose the judgment filed against her by General Motors Acceptance Corporation. This finding is based upon the applicant's testimony at the hearing indicating her confusion over the status of the debt.

2. Despite her outstanding debts totalling approximately $6,700, the applicant has demonstrated by clear and convincing evidence her financial stability, integrity and responsibility as required by N.J.S.A. 5:12-89(b)(1) and 90(b).

3. The applicant has demonstrated by clear and convincing evidence her good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that copies of this Final Order be served upon Maria M. Huertas, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within 10 days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

By: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5572-84

AGENCY DKT. NO. 84-EA-108

MARIA M. HUERTAS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Angelina Montanez, Esq., for Petitioner

Anthony D'Elia, Deputy Attorney General, for Respondent, (Irwin I. Kimmelman, Attorney General of New Jersey, Attorney)

Record Closed: November 9, 1984 Decided: December 24, 1984

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Maria M. Huertas to the Casino Control Commission for licensure as a casino employee, permitting her to work in a casino as a teller. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence her reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the Act.

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2. Whether the petitioner has established by clear and convincing evidence her financial stability, integrity and responsibility, within the meaning of sections 89b(1) and 90 of the Act.

3. Whether the petitioner has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of sections 88b and 90e of the Act.

PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated May 25, 1984 (Exhibit J-1), the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on July 26, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14:F-1 et seq.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The petitioner is a 42 year old resident of Newtonville, New Jersey, and she is the mother of 8 children. Her personal history disclosure form (Exhibit J-3) reveals that she had employment as a berrypicker between 1970 and 1982. According to her testimony, she also received welfare benefits between 1974 and 1981. Beginning April 30, 1984, and for approximately six months, the petitioner was employed as a dishwasher.

It is undisputed that the petitioner owes the First National State Bank an outstanding balance of $3,810.00 for an auto loan account which has been in arrears since May 1, 1979. This loan was granted for the purchase of a Ford stationwagon. The petitioner acknowledged that she made five payments on the auto loan and then stopped making any further payments when she received the bill of sale from the auto dealer. The petitioner also acknowledged that she informed a Division of Gaming Enforcement

investigator that she has no intention of making any further payments on this auto loan, but it was her testimony that she has since decided that she will start paying off her debts when she obtains some money.

It is undisputed that the petitioner traded in the previously mentioned Ford stationwagon on the purchase of a 1976 Monte Carlo. In order to complete the purchase, the petitioner obtained another auto loan from the General Motors Acceptance Corporation. According to the petitioner, she had problems with the Monte Carlo and when she returned it to the dealer for repairs, she was informed that the dealer would not fix it. The petitioner became angry with this situation and refused to continue making payments.

When the petitioner failed to make payments for two successive months, the dealer sought to repossess the Monte Carlo. The petitioner was told that the car would be taken back unless she made both payments immediately. According to the petitioner, she told the dealer that she was to be receiving a car accident damage award at the end of the week and that she would pay the balance on that day. She also informed the dealer that if he took the car immediately she would not make any payments. The dealer repossessed the car.

Subsequently, the petitioner received a letter from the dealer who had repossessed the Monte Carlo, saying that it had been sold and that she still owed the unsatisfied balance of the loan. According to the petitioner, she received three or four letters which said that if she did not pay the balance, she would receive a summons and would be required to go to court. In response, the petitoner made approximately two payments of $50.00 per month, but then lost her job and could not make any further payments. When she received a summons which said she was a defendant and that she would have to go to court, she started to make payments again. It was the testimony of the petitioner that she made five further payments and then stopped making payments again. It is undisputed that the General Motors Acceptance Corporation obtained a civil judgment against the petitioner in the amount of $2,897.00 (Exhibit J-2).

Question #18 on the petitioner's personal history disclosure form (Exhibit J-3), requires disclosure of whether the petitioner had ever been sued or named as a defendant or respondent (including collection and debt matters) in a lawsuit. Although General

Motors Acceptance Corporation obtained the previously mentioned civil judgment against the petitioner, it is undisputed that the petitioner answered the question concerning whether she had been named as a defendant in a lawsuit, "no."

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The material factual dispute in this matter concerns the reason for the petitioner's failure to disclose on her personal history disclosure form that she had been named as a defendant in a lawsuit. After the hearing, the petitioner explained that she did not know at the time she prepared the personal history disclosure form that she had been named as a defendant in a civil collection suit filed by General Motors Acceptance Corporation, since she felt she had entered into an agreement to pay the debt by installments and since she had never been to court on the matter. In addition, the petitioner explained that she did not realize at the time she prepared the personal history disclosure form that General Motors Acceptance Corporation had obtained a judgment against her following her failure to continue to make the installment payments.

Testifying on cross-examination, the petitioner acknowledged that she had retained the services of a lawyer in approximately 1975, and that he had filed a lawsuit on her behalf to obtain damages for her involvement in an auto accident. She further acknowledged on cross-examination that she had received a summons concerning the complaint of the General Motors Acceptance Corporation, and that this summons informed her that she was named as a defendant and that she would have to go to court. According to the petitioner, she never received any further papers and she did not go to court.

The petitioner's testimony on cross-examination acknowledging that she knew she had been named as a defendant when she received the summons conflicts with her testimony offered earlier which maintained that she did not know at the time she prepared her personal history disclosure form that she had been named as a defendant in a lawsuit. Having heard the petitioner's conflicting explanations and having weighed them, I do not feel that the petitioner's profession of ignorance is credible. Accordingly, I further **FIND** that petitioner's failure to disclose on her personal history disclosure form that she had been named as a defendant in a lawsuit was intentional, rather than ignorant or inadvertent.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), which incorporates the licensing criteria set forth in section 89, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. By the same standard, an applicant must establish his financial stability, integrity and responsibility. Section 90 also incorporates the disqualification criteria set forth in section 89 of the Act. Pursuant to section 86b, an applicant shall be disqualified on the basis of his failure to reveal any facts material to qualification, or his supplying information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

The petitioner is presently on leave from employment and it is undisputed that she owes an outstanding balance of $3,810.00 to the First National State Bank and that General Motors Acceptance Corporation has obtained a civil judgment agsinst her in the amount of $2,897.00. Although the petitioner previously expressed that she had no intention of paying the debt to the First National State Bank, she has subsequently testified that she intends to pay her debts when she obtains some money. However, based upon the foregoing undisputed facts, I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, that she possesses the requisite financial stability, integrity and responsibility for licensure, within the meaning of sections 89b(1) and 90 of the Casino Control Act.

It is undisputed that the petitioner failed to disclose on her personal history disclosure form that she has been named as a defendant in a lawsuit. That lawsuit concerned the civil judgment obtained against her by General Motors Acceptance Corporation. Having found that the petitioner's failure to disclose was intentional, rather than ignorant or inadvertent, I must **CONCLUDE** that petitioner is disqualified from licensure on the basis of her failure to reveal facts material to qualification, within the meaning of sections 86b and 90e of the Act. I further **CONCLUDE** that the petitioner's intentional failure to disclose prevents her from establishing, by clear and convincing evidence, her reputation for good character, honesty and integrity, within the meaning of sections 89b(2) and 90 of the Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Maria M. Huertas for a casino employee license, permitting her to work in a casino as a teller, be denied.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 24, 1984
DATE

Joseph J. Fidler
JOSEPH J. FIDLER, ALJ

Receipt Acknowledged:

December 28, 1984
DATE

Mary Ann Zoreyk
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 31 1984
DATE

Ronald L. Parker/pkw
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

Joint Exhibits:

J-1 Letter, dated May 25, 1984
J-2 Credit Profile, dated October 25, 1984
J-3 Personal History Disclosure Form

WITNESSES

For the petitioner:

Maria M. Huertas

For the respondent:

None.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 44883-21
AGENCY DOCKET NO. 84-EA-94
OAL DOCKET NO. CCC 4358-84

IN THE MATTER OF THE APPLICATION
OF EDWARD K. JONES, JR.
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 19, 1984, recommending that the application of Edward K. Jones, Jr. for a casino employee license be denied; and no exceptions having been filed to the Initial Decision; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 16, 1985, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 7th day of FEBRUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Edward K. Jones, Jr. for a casino employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Edward K. Jones, Jr. is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Edward K. Jones, Jr., the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4358-84

AGENCY DKT. NO. 84-EA-94

EDWARD K. JONES, JR.,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Howard Kleinman, Esq., for petitioner

Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 4, 1984 Decided: November 19, 1984

BEFORE **JEFF S. MASIN,** ALJ:

Edward K. Jones, Jr. applied to the Casino Control Commission (Commission) for licensure as a casino employee with a position designation of security employee. The Division of Gaming Enforcement (Division) objected to Mr. Jones' licensure in a letter dated May 10, 1984. The basis for the objection arose out of the Division's contention that Mr. Jones had been convicted of child abuse in the State of Maryland, an offense conceived by the Division as being comparable to N.J.S.A. 2C:12-1b(1), aggravated assault, and therefore, a statutory disqualifying offense. In addition, the Division questioned whether Jones had the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)2. With respect to this allegation, the Division relied upon Jones' arrests and convictions set forth in the letter of May 10,

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1984. Finally, the applicant contended that he had rehabilitated himself from any adverse affects of his prior criminal record, thus allowing licensure pursuant to N.J.S.A. 5:12-90(h).

THE EVIDENCE

Edward K. Jones, Jr. testified that he was first arrested in Salisbury, Maryland in 1969 when he and two friends were taken into custody at a J.C. Penny's department store for shoplifting. According to Jones the other two boys were shoplifting, although Jones took nothing. The charges were eventually dismissed against him.

He was arrested in California in 1973 for lewd conduct. He testified that this resulted from some actions involving he and his girlfriend when they were attending an x-rated movie. No evidence as to the disposition of this charge was presented during the hearing, although the Division's letter of May 10, 1984 indicates that Jones was placed on one year probation.

Jones was arrested for shoplifting in Los Angeles in September of 1973. He admitted at the hearing that he had taken something under $30 worth of merchandise. This activity occurred when he was undergoing a period of severe financial strain. The applicant described it as "a stupid thing."

The most serious charges against Jones were those concerning child abuse which were lodged against him in Maryland in 1981. The victim was his stepson. According to the witness he came home on January 18, 1981 to find his wife getting ready to go to work. She had bathed her son and put him in pajamas. He spilled a drink on the boy and decided to give him another bath. He placed the boy in the bathwater and the water was too hot. In the course of this activity, Jones discovered a four-inch blister on the mid-back area of the child. He put some lotion on it and peeled off some of the dead skin. The area was turning red. Jones decided to take the child to the hospital.

According to police reports placed in evidence by the Division, examination of the child at the emergency room indicated that the child had suffered second degree burns on its back. The child also exhibited the presence of petechiae, described as hemorrhagic spots caused by "immense pressure" on the body. The police reports also indicate that the child's hair had been "haphazardly cut off."

Mr. Jones testified that he had given the child a haircut about two weeks before and that it was not haphazard. Jones denied statements contained in the police report and purportedly made by him that he had cut the child's hair in a haphazard fashion "for revenge against the guardian, Barbara McCoy," the child's paternal grandmother.

Records of the Circuit Court for Wicomico County, Maryland, presented as evidence, indicate that Jones was charged with assault and battery and child abuse. He entered a plea of guilty to the child abuse charge. The initial charge had apparently alleged that the child abuse occurred on January 17, 1981, but that was amended to read "for a period from 1-4-81 through 1-18-81." The charges regarding the 4th of January apparently stemmed from information obtained by the police during their investigation that the victim had been brought to the hospital for examination on January 4, 1981 and had been observed at that time to have severe contusions.

Upon his plea of guilty to the child abuse charge, Jones was sentenced on May 26, 1981 to three years in the custody of the Commissioner of Corrections, which sentence was suspended. Jones was placed on probation for five years and was ordered to seek psychological treatment as deemed necessary. The child was also not to be in his custody.

Part of the evidence which was submitted during this hearing was in the form of a letter which Jones had submitted to the Division. This letter contained Jones' version of the facts surrounding the child abuse incident. Jones did not admit that he had abused the child and contended that the charge against him arose out of "pure racial prejudice." (Jones is half white and half black, his wife is white and his wife's stepson - the victim of the abuse, is half white and half black).

Mr. Jones testified that he has been married for five and a half years to Theresa Jones, the mother of the victim of the child abuse. She has two chidren who are seven and eleven years old. Jones attended Morgan State College where he studied business and accounting.

Mr. Jones is no longer on probation, having been terminated in March of 1984 with a satisfactory completion.

In addition to his testimony, Mr. Jones presented affidavits from a number of individuals who have known him for many years in his home community of Salisbury, Maryland. These include retired public school teachers, his family pastor, guidance counsellors, the family physician and his wife. Mrs. Jones' statement contends that the child abuse charges were racially motivated and that her husband "could not hurt anyone, he is a very kind, gentle and loving person who loves children; he is very caring and loving to my daughter."

Mr. Jones also presented evidence concerning his activities as a security guard at Atlantic Community College, where he has received commendations for his actions in connection with a fire which occurred this past summer.

DISCUSSION

The Division objects to Mr. Jones' licensure on good character grounds, as well as on the basis that his conviction for child abuse is a statutory disqualifier. Under Maryland law, Article 27, Section 35A of the Annotated Code of the Public General Laws of Maryland 1957, "abuse" means:

> (a) Physical injury or injuries sustained by a child as a result of cruel or inhuman treatment or as a result of malicious act or acts by any parent, adoptive parent or other person who has the permanent or temporary care or custody or responsibility of supervision over a minor child under circumstances that indicate that the child's health or welfare is harmed or threatened thereby.

The Division contends that a conviction for child abuse is similar to an aggravated assault conviction under New Jersey Statute N.J.S.A. 2C:12-1b(1), which sanctions one who:

> Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly, or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury.

I agree with the Division that Mr. Jones' conviction for child abuse is a statutory disqualifying offense. The actions which he pled guilty to engaging in, that is, child abuse for a period in early January 1981, were quite serious. They certainly involve the type of conduct made illegal by New Jersey's aggravated assault statute. The same

elements of malice, extreme indifference and purposeful injury are present in both statutes, although each uses different wording. Although Jones, and his wife, apparently now deny that he in fact abused the child, he did enter a plea of guilty to that charge and I am bound by that plea.

The police reports indicate that the child suffered some significant and dangerous injuries, including second degree burns. Mr. Jones' explanation, while it cannot serve to exculpate him from the guilt which he has already admitted, did not serve in any reasonable way to mitigate his involvement either. I did not find his version convincing.

The other arrests which Jones has suffered are sufficiently remote in time and insignificant in nature that they do not constitute detriments on his good character, honesty and integrity as of this date. However, a conviction for child abuse certainly does raise severe questions about the good character of an individual.

Having concluded that Mr. Jones was convicted of a statutory disqualifying offense and that his good character was seriously affected by that conviction and the underlying facts upon which it was based, I must consider whether he has rehabilitated himself. Although he has presented significant character evidence from persons who have known him for many years, the vast majority of which time was before the date of his conviction for child abuse, I cannot find that Jones' successful completion of probation in and of itself is a sufficient basis for finding that one with such a serious conviction, based on such circumstances as are revealed in the evidence presented in this case, has indeed rehabilitated himself from this statutory disqualifier and its affect on his character. The fact that Mr. Jones continues, in essence, to deny his guilt of any child abuse, after having entered a plea a guilty to the charge, raises some serious questions as to his character. Although the court recognizes that individuals occasionally plead guilty for reasons other than a true acknowledgment of their own guilt, I cannot, under the circumstances of this case, find that Mr. Jones truely has rehabilitated himself from his past wrongs. Indeed, one seriously questions whether he has any recognition of having committed such wrongs.

One cannot achieve rehabilitation merely by the passage of time alone. There must be something further to indicate that the individual, particularly where he has a history of a serious criminal offense, has changed his attitudes, his ways, and is a reasonable future risk. The Legislature has seen to fit to authorize, and indeed require, denial of licensure where individuals have suffered convictions for certain specific

statutory offenses. Child abuse, as a form of aggravated assault upon generally defenseless persons, often in the custodial care of the perpetrator, is an extremely serious matter. Given all of the circumstances as described, I cannot find that Mr. Jones has rehabilitated himself sufficiently to establish by clear and convincing evidence, as required by N.J.S.A. 5:12-90b and 89b, that he has the requisite good character, honesty and integrity required for licensure.

I **CONCLUDE** that the applicant has been convicted of a statutory disqualifying offense. I also **CONCLUDE** that he has failed to establish his rehabilitation and his present good character, honesty and integrity, which must be proven by clear and convincing evidence. Therefore, pursuant to N.J.S.A. 5:12-86(b), 90b and 89b, his license must be denied.

It is **ORDERED** that the license application of Edward K. Jones, Jr. be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 19, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Principal Legal Analyst

Mailed to Parties:

NOV 21 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Atlantic Community College Invitation

P-2 College newspaper, "Accretion"

P-3 Memorandum of August 21, 1984

P-4 Letter from Cleo L. Walston

P-5 Letter from Pastor Charles H. Mack

P-6 Letter from Joe L. Cain, Ed.D.

P-7 Letter from Mrs. Marjorie S. Jackson

P-8 Letter from E.A. Purnell, M.D.

P-9 Letter from Araminta P. Francis

P-10 Letter from Theresa Ann Jones

On behalf of respondent:

R-1 Personal History Disclosure Form - 2A, dated December 9, 1982

R-2 Letter to Investigator Donahue from Mr. Jones

R-3 Criminal Investigation Report, Maryland State Police

R-4 FBI Criminal Record (RAP) Sheet

R-5 State of California, Department of Justice, Bureau of Identification, Criminal Record (RAP) Sheet

R-6 Criminal Informaion with attached Summons, In the matter of State of Maryland v. Edward K. Jones, Circuit Court Wicomico County

R-7 Judgment of Conviction and Criminal Docket, In the Matter of State of Maryland v. Edward K. Jones, No. 10809

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-4
OAL DOCKET NO. CCC 1206-84
APP. NO. 02608-11
REGISTRATION NO. 44818-40

APPLICATION OF EUGENE JONES

FOR A CASINO KEY EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the applicant having filed exceptions to the initial decision and the Division of Gaming Enforcement having filed a reply; and the Commission having considered the entire record of these proceedings at its public meeting of May 1, 1985,

IT IS on this 17th day of May, 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Eugene Jones is prohibited from reapplying for or obtaining any license, qualification, or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino key employee license shall not prevent Eugene Jones from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Eugene Jones, the Division of Gaming Enforcement, the Office of Administrative Law and all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1206-84
AGENCY DKT. NO. 84-EA-4

EUGENE JONES,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Respondent.

D. William Subin, Esq., for the petitioner

Anthony V. D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: January 24, 1985 Decided: March 11, 1985

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the recommendation of the Division of Gaming Enforcement (Division) that Eugene Jones not be granted a casino key employee license which was filed with the Casino Control Commission on January 5, 1984, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

Mr. Jones requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference took place by way of a telephone conference call on March 16, 1984. At that time, Mr. Jones, appearing pro se, and Deputy Attorney General Anthony V. D'Elia agreed that the issues in this matter are:

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1. Whether the petitioner can establish his good character, honesty and integrity as required by law.

2. Whether the petitioner gave fraudulent information regarding his education on his application for a casino key employee license.

The Division's recommendation that the petitioner not be licensed was based on the alleged circumstances surrounding a bank loan for the purchase of property in Ellisville, Mississippi and on the petitioner's alleged misrepresentation in his license application that he had received a B.S. degree from Tennessee A & I University and had taken courses while in the army (R-1). At the hearing, Mr. D'Elia stated that based on information then available to the Division, it was no longer questioning the real estate transaction.

The hearing in this matter took place on May 29, 1984 and Mr. Jones appeared pro se. I initially permitted the record to remain open for 20 days in order to give Mr. Jones the opportunity to submit additional documentation and for Mr. D'Elia to have an opportunity to submit comments thereon.

After the hearing, I received a call from Lou Washington, employed by the Veteran's Administration. Mr. Washington, on behalf of Mr. Jones, requested that I keep the record in this matter open for 90 days so that he could arrange to have a copy of Mr. Jones' army personnel file (the 201 file) sent to me since it might contain information regarding Mr. Jones' education. By letter dated June 26, 1984, Mr. D'Elia opposed this request and argued that Mr. Jones had ample opportunity prior to the hearing to obtain this information. I placed the matter on the inactive list of cases for 90 days by Order dated July 12, 1984, since I concluded that the petitioner should be given the opportunity to supplement the record in view of the absence of any detriment to the respondent.

By letter dated July 6, 1984, D. William Subin, Esq. notified me that he had been retained by Mr. Jones, and requested that he be given the opportunity to submit additional evidence, and by letter dated July 16, 1984, Mr. Subin requested a supplemental hearing in this matter. Mr. D'Elia opposed Mr. Subin's request by letter dated July 19, 1984. During a telephone conference call on July 31, 1984, I indicated that I would allow Mr. Subin to enter an appearance on behalf of Mr. Jones; I denied Mr. Subin's request for a supplemental hearing, and I stated that I would allow Mr. Subin to offer supplemental

exhibits subject to review by Mr. D'Elia within the 90 day period provided by my Order, see my letter of August 1, 1984.

Mr. Subin by letter, dated October 1, 1984, asked for the opportunity to make an oral presentation as to the admission of certain exhibits as well as an oral closing argument. Mr. D'Elia concurred with this request by letter dated October 10, 1984. The oral argument took place on October 29, 1984. At that time, I allowed into evidence one exhibit for the Division (R-9), 18 exhibits for the petitioner (P-1 through P-17, P-19), and I reserved decision regarding the admission of the results of a polygraph examination of the petitioner. After receipt of briefs, I denied Mr. Subin's request to admit the polygraphic results into evidence by Order dated January 24, 1985. The record in this matter closed on that day.

At the hearing, Mr. Jones testified that he attended Tennessee A & I University for four years, that his major was biochemistry and that he graduated with a B.S. degree in 1958. According to Mr. Jones, he wanted to be an agricultural agent and A.H. Moody, an agricultural agent paid for his education. Mr. Jones stated that he went to college at the same time as his brother, William Charles Jones and that he and his brother took basically the same courses and graduated at the same time.

Sometime after his graduation, Mr. Jones returned to extended active duty with the army. When he filed a request to be a warrant officer in 1969, Mr. Jones testified that he enclosed a copy of the college transcript that he received at that time from Tennessee State University, (Tennessee A & I University is now a part of Tennessee State University). He submitted this transcript since the army required applicants for the position of warrant officer to have two years of education beyond high school.

Mr. Jones received the promotion to warrant officer and during the next several years he managed military clubs at various locations. While he was a warrant officer, Mr. Jones stated that the army authorized him to take several courses in food procurement, hotel, motel and restaurant management and accounting as it pertained to hotel, motel and restaurant management. He stated that he took several courses over a two year period at the California State University. Mr. Jones' testimony was vague and inconsistent as to the number of courses he had taken while in the army.

Mr. Jones was in the army for a total of 28 years. He served as an infantry soldier for 18 years and retired as a warrant officer on July 30, 1982. Mr. Jones represented that all his personal records were either lost while he was serving in Vietnam or during his divorce proceedings.

At the time of his retirement, an army personnel officer prepared for Mr. Jones a personal qualification statement form (R-5) which Mr. Jones read and signed. The army then sent this form to various agencies to help the petitioner find employment after retirement. On this form, it is represented that, while in the army, Mr. Jones had taken 90 semester hours in hotel and restaurant management, accounting and finance management and business administration courses at the University of California, Sacramento and the University of California Davis between 1972 and 1975 (R-5). Mr. Jones admitted that the information relating to the courses he had taken while in the army was misleading as to the number and types of courses he had taken, and stated that this information was inserted by the army personnel officer. On this form there is no mention of any attendance or degree from Tennessee A & I University (R-5). Mr. Jones stated that this degree was not listed since he wanted a job in the field of food management.

In November 1982, Mr. Jones got a job as a food and beverage controller at Bally's Park Place Casino Hotel. He received a temporary casino key employee license. Mr. Jones was still employed by Bally's Park Place Casino Hotel at the time of the hearing. Mr. Jones' temporary application has now lapsed and he is no longer employed by Bally's Park Place Casino Hotel.

Mr. Jones filed an application for a casino key employee license in February 1983. In his Personal History Disclosure Form-1, (PHDF-1), Mr. Jones represented that he received a B.S. degree from Tennessee A & I University (R-1, question #28, page 9), and he attached to this form a copy of a transcript of courses from Tennessee A & I University (R-1, Exhibit 3) and a Certificate of Release or Discharge from Active Duty which states that Mr. Jones took courses in open mess management and installation club management while in the army (R-1, Exhibit 4).

Anthony H. LoCicero, an investigator employed by the Division stated that he was assigned to check the license application filed by Mr. Jones. Mr. LoCicero asked Mr. Jones for a better copy of the college transcript attached to the PHDF-1 and he received the copy which was marked into evidence as R-3. Mr. LoCicero noted that

Mr. Jones had indicated an interest in a controller position on his casino key employee license application, and he told Mr. Jones that the requirements for controller positions usually included some accounting courses and asked Mr. Jones if he had taken any such courses. Mr. Jones mentioned that he had taken several courses at Sacramento State College which were paid for by the army. Mr. LoCicero asked Mr. Jones for verification of these courses and Mr. Jones submitted a certificate of participation from California State University, Sacremento (R-3). Since this certificate did not list the course or courses taken, Mr. LoCicero asked for further documentation and Mr. Jones later gave him a letter from Katherine Ross (R-4). In her letter, Ms. Ross identified herself as the "Asst. Registrar [,] California Univ. of Sacramento" and stated that Mr. Jones "was accredited 32 hours in an Accounting Course" and had taken "Accounting Practices for Hotel/Motel Management [,] Food & Beverage Cost Controls [,] Food & Beverage Purchasing [and] Legal Aspects of Hotel/Motel" (R-4).

Mr. LoCicero questioned the validity of this letter from Ms. Ross since it did not appear on the stationary of the university and was poorly worded, and he called Thomas Edwards, the University Registrar who indicated orally and in writing (R-6) that there was no record that Mr. Jones ever attended California State University, Sacramento, that the university offered no hotel and management courses, and that the university never had a Ms. Ross employed as an assistant registrar. According to Mr. Edwards, a Ms. Ross was employed for some time by the university as a clerk at another campus of the university (R-6).

At the hearing, Mr. Jones stated that he received the letter from Ms. Ross when he asked for more information regarding the courses he had taken at the university, and that when he later checked with the university, he was informed that there was no record of his attendance.

In view of the information from Mr. Edwards, even though it was not the normal practice of the Division to verify nonrelated degrees, Mr. LoCicero contacted Tennessee State University and was informed that Mr. Jones had not attended the Tennessee A & I University and had not received a degree. Mr. LoCicero sent Tennessee State University a copy of the transcript (R-3) submitted by Mr. Jones and Shirley A. McNair, Registrar, Tennessee State University stated in a letter that the transcript had been traced and identified as belonging to William Charles Jones, who had received a degree and again stated that Eugene Jones had not attended the university nor received a

degree (R-7, R-8). Mr. LoCicero then asked Mr. Jones for the original copy of the transcript so that he could see if there were any alterations as to the listed name of the student and Mr. Jones told him that he could not find the original.

At the hearing, Mr. Jones did not deny that the college transcript might belong to his brother and stated that he and his brother took almost the same courses. Mr. Jones insisted that the transcript was the same one he received when he asked the university for his transcript in 1969. Also Mr. Jones stated that he recently contacted Tennessee State University and was informed that there was no record of this attendance or graduation.

During the sworn interview conducted by Mr. LoCicero and Deputy Attorney General D'Elia as well as at the hearing, Mr. Jones denied that he had altered his brother's college transcript.

As already stated, I allowed the record to remain open after the hearing to allow Mr. Jones time to supplement the record. I specifically suggested that Mr. Jones try to obtain letters from his brother, Mr. Moody, his classmates and/or teachers regarding his attendance at Tennessee A & I University, and attempt to get copies of army documents verifying that he took courses while in the army. Mr. Jones testified that he had tried but that he was having difficulty getting any verification.

A number of letters were admitted into evidence on behalf of the petitioner after the hearing.

John P. Daschler, Director of Educational Services, The Educational Institute, American Hotel and Motel Association, stated that Mr. Jones had taken courses offered by the Institute at the California State University at Sacramento in 1974-75 and had received a certificate from both the Institute and the University (P-13, P-14). The transcript that was attached to Mr. Daschler's letter shows that Mr. Jones had taken five courses, Food and Beverage Purchasing, Food and Beverage Management and Services, Food and Beverage Controls, Food Production Principles and Supervisory Development (P-15).

By letter dated July 25, 1984, Duane L. Anderson, Director of Admissions, Records and School/College Relations, California State University, Sacramento, stated that the University has offered short term, noncredit programs through the University

Extended Learning Office and other schools with the university and that participants in these programs receive a certificate of participation, however, the university's records regarding such attendance are usually destroyed after five years (P-16).

The 201 file for Mr. Jones shows that he had taken a number of courses while in the army and that he had informed the army that he graduated from Tennessee A & I University (P-17, R-9). However, the file does not contain any copies of transcripts, certificates or diplomas relating to his college or military education nor any indication that the army had ever checked the representation regarding his college attendance or graduation. Mr. Jones's 201 file clearly establishes that he has an excellent military record and that he did an outstanding job running various military clubs (P-17).

A number of current or retired military personnel submitted letters regarding to Mr. Jones's good character and his impeccable military record especially in the role of military club manager (P-2, P-3, P-6, P-7, P-9, P-11, P-17). Mr. Clark, an attorney in Mississippi, stated in his letter of July 25, 1984, that he has known Mr. Jones for more than 25 years and that Mr. Jones was a person of good character, honesty and integrity (P-10).

The exhibits introduced into evidence also show that Mr. Jones did a good job while employed by Bally's Park Place Casino Hotel and that he was well regarded by his employer (P-1, P-4, P-5).

In closing, Mr. D'Elia stated that a casino key employee license was needed for positions with a high degree of responsibility and that any application for such a license had to be carefully reviewed as to the qualifications of the applicant. In this matter, Mr. D'Elia argued that the Division had established reasonable doubt as to the accuracy of the statements made by Mr. Jones regarding his education on his license application, during the investigation by Mr. LoCicero and at the hearing, and therefore, doubt as to his character, honesty and integrity. According to Mr. D'Elia, Mr. Jones probably lied about his college attendance and graduation in order to get a better position in the army and then continued this lie when he applied for a casino key employee license. As to the letter from Ms. Ross, Mr. D'Elia argued that Mr. Jones knew it was a fake when he submitted it to the Division.

Mr. Subin noted that Mr. Jones had an excellent military record and that he had successfully performed his job when employed by Bally's Park Place Casino Hotel. Mr. Subin argued that Mr. Jones had no reason to lie and that he should not be deprived of a license because a university lost the record regarding his attendance. According to Mr. Subin, independent documented proof of his college attendance is now difficult to obtain due to the long lapse of time.

Mr. Subin argued that the Division had not submitted any conclusive proof that Mr. Jones had lied regarding his education and that it was unfair for the burden of proof to be on the petitioner to prove his honesty. Mr. Subin did recognize that by statute the burden of proof was on the petitioner to establish his good character, honesty and integrity. According to Mr. Subin, any statement made by Mr. Jones regarding his attendance and graduation from Tennessee A & I University was not a material fact since this education was not relevant to his qualifications for the casino key employee license.

Any finding as to the facts in this matter is substantially dependent on the question of the credibility of Mr. Jones. Although at the hearing Mr. Jones appeared to be a sincere and truthful witness, after I reviewed the testimony as well as all the exhibits admitted into evidence, I **FIND** that I do not believe a substantial part of Mr. Jones's testimony relating to his education.

I do not doubt that Mr. Jones, as a warrant officer, took a number of courses relating to the operation of military clubs. These courses related to hotel-restaurant management and probably involved some aspects of accounting as appropriate to the subject matter. Although I **FIND** that Mr. Jones did take courses while he was in the army, I also **FIND** that the number of such courses was exaggerated in the personal qualification statement (R-5). It should be noted that this form was not part of Mr. Jones's application for casino license but was used by him to obtain employment after he left the army. Based on the exhibits presented by the parties, I **FIND** that Mr. Jones took five courses in food and beverage management and supervisory responsibility at the California State University, Sacramento (P-15) and that he took several other courses at various locations during the time he was a warrant officer. This finding is consistent with the information contained in his 201 file (P-17).

The petitioner's exhibits admitted into evidence after the hearing also clarify why the Division was unable to get a verification from the California State University, Sacramento, as to the courses taken by Mr. Jones. Therefore, there is no question that

the certificate presented by Mr. Jones accurately reflects the fact that he participated in a program at California State University, Sacramento, which was sponsored by the Educational Institute, American Hotel and Motel Association.

However, after Mr. Jones was initially questioned about the courses taken while in the army, he submitted a letter (R-4) from Ms. Ross. The representatives of the university contacted by the Division denied that Ms. Ross was an assistant registrar and there is nothing in the documents presented by the petitioner to resolve the questions raised relating to Ms. Ross' letter. Mr. Jones would have me believe that he contacted the California State University, Sacramento and, in response, he received the letter from Ms. Ross. The Division challenges the veracity of this testimony since this letter is poorly worded, not on university stationary and written by a person who never held the position of assistant registrar. There appears to be only one possible explanation for this letter and that is that Mr. Jones, concerned about the Division's request for verification, fabricated a letter in the hope that the Division would accept it without checking with the university. It should be noted that Ms. Ross's letter incorrectly alleges that Mr. Jones took accounting courses at the university and the specific courses set forth by title in Ms. Ross' letter are inconsistent with the titles of the courses actually taken by Mr. Jones as shown in the official transcript (P-15).

Therefore, I **FIND** that although Mr. Jones attended courses at the California State University, Sacramento, he fabricated an exhibit and lied about the letter during the Division's investigation and at the hearing.

As to Mr. Jones's representation that he graduated from Tennessee A & I University, if this was the only question relating to his veracity, I would give him the benefit of the doubt and accept his testimony that he attended and graduated from this college. Most certainly it is not impossible for a university to lose the records relating to a single student. However, based on all the evidence, I **FIND** that it is reasonable to assume that Mr. Jones intentionally used his brother's college transcript in order to obtain the promotion as warrant officer, and having once made this representation, Mr. Jones found himself in a "catch 22" situation and continued the misrepresentation when he filed his application for casino licensure. Also, I **FIND** it impossible to accept the representation that Mr. Jones went to college for four years, and that he cannot now present any letters to support this representation from such persons as Mr. Moody, his brother, family member, teachers or fellow students.

Although I accept Mr. Subin's representation that he had difficulty getting some information from the Tennessee State University, the record shows that the university did cooperate with the Division in its investigation and that a sincere effort had been made by the university to locate records relating to Mr. Jones's alleged attendance.

As to his college attendance, the army 201 file for Mr. Jones contains no additional independent information to support Mr. Jones's representation and only verifies the fact that Mr. Jones had represented to the army that he attended college for four years.

As to the other facts pertinent to this matter, I **FIND** that they are not in dispute and are fully set forth in this initial decision. In summary there is no question that Mr. Jones has an exemplary army record and that he had has extensive experience operating militiary clubs.

Therefore the issue is this matter is whether Mr. Jones's misrepresentation as to his college attendance and degree, and fabrication of a letter to verify the fact that he had taken certain courses warrant his disqualification pursuant to N.J.S.A. 5:12-86b and/or whether these facts reflect negatively on his character, honesty and integrity.

The Casino Control Act sets up various grounds on which an applicant for licensure should be disqualified and specifically provide:

> Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria [N.J.S.A. 5:12-86b].

Clearly the information given by Mr. Jones regarding the courses he took while in the army have a direct bearing on his qualifications for the type of position he was seeking in the casino industry, and I **CONCLUDE** that Mr. Jones did give false, and misleading information to the Division's investigator as to material facts pertaining to his qualifications for license.

Although I **CONCLUDE** that Mr. Jones's alleged college degree is not directly related to his qualifications for the casino position, it is a disqualifying factor, pursuant to N.J.S.A. 5:12-86b, since the PHDF-1 requires an applicant to supply specific information regarding his education.

Based on the same facts, I **CONCLUDE** that notwithstanding the letters of endorsement submitted by Mr. Jones which establish his exemplary conduct while in the army and while working for Bally's Park Place Casino Hotel, the misrepresentations on his casino key employee application and during the investigation are sufficient to negate Mr. Jones' ability to show by clear and convincing evidence that he is a person of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

Therefore, I **CONCLUDE** that the recommendations of the Division to deny the application for licensure as a casino key employee submitted by Eugene Jones be **AFFIRMED** and that the matter be **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 120[illegible]4

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 11, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

March 11, 1985
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

MAR 13 1985
DATE

Ronald L Lykes/jsh
OFFICE OF ADMINISTRATIVE LAW

bc

APPENDIX

PART I-AT THE HEARING

EXHIBITS ADMITTED INTO EVIDENCE FOR THE RESPONDENT:

R-1 Application form filed by Eugene Jones for licensure as a casino key employee (controller)

R-2 Part of a college transcript

R-3 Certificate of Participation issued to Eugene Jones from the California State University, Sacramento

R-4 Letter from Cathering Ross, Assistant Registrar, California University of Sacramento to Eugene Jones, dated August 22, 1983

R-5 Personal Qualification Statement for Eugene Jones

R-6 Letter from Tom Edwards, University Registrar, California State University, Sacramento to Mr. Trocchia of the New Jersey State Police, dated October 11, 1983

R-7 Letter from Shirley A. McNair, Registrar, Tennessee State University to Major R.C. Winters of the New Jersey State Police, dated November 18, 1983

R-8 Letter from Shirley McNair-Wingfield, Registrar, Tennessee State University to Deputy Attorney General Anthony V. D'Elia, dated April 25, 1984

PART II-AFTER THE HEARING

EXHIBITS ADMITTED INTO EVIDENCE

FOR THE RESPONDENT:

R-9 Affidavit of Thomas Ray Spivey, dated July 31, 1984

FOR THE PETITIONER:

P-1 Letter from Vaughn C. Glapion, Training Manager, Bally's Park Place Casino Hotel, dated June 6, 1984

P-2 Letter from Erin S. O'Brien, Manager, Administrative Support Branch, Department of the Army, dated May 14, 1984

P-3 Letter from William R. Thorp, dated January 1984

P-4 Letter from Joseph R. Knorr, Director of Personnel Bally's Park Place Casino Hotel, dated June 11, 1984

P-5 Employee Performance Evaluations for Eugene Jones in the position of Food and Beverage Controller, dated May 13, 1983 and December 27, 1983

P-6 Letter from Rudolph Aksland to Beatrice S. Tylutki, dated July 19, 1984

P-7 Letter from George F. Marko to Beatrice S. Tylutki, dated July 31, 1984

P-8 Letter from Frederick S. Humphries to Eugene Jones, dated July 26, 1984

P-9 Letter from R.D. Vliet, Director for Administration and Services, Department of the Army to Beatrice S. Tylutki, dated July 27, 1984

P-10 Letter from Thomas Gene Clark to Beatrice S. Tylutki, dated July 25, 1984

P-11 Letter from Leo A. Brooks to Beatrice S. Tylutki, dated July 24, 1984

P-12 Letter from Lieutenant Colonel John Louis Conway Department of Army, dated July 24, 1984 with attachments

P-13 Letter from John P. Daschler, Director of Educational Services, Educational Institute to Beatrice S. Tylutki, dated July 24, 1984

P-14 Letter from John P. Daschler, Director of Educational Services, Educational Institute to Beatrice S. Tylutki, dated July 24, 1984 indicating transcript included

P-15 Educational Institute transcript regarding courses taken by Eugene Jones

P-16 Letter from Duane L. Anderson, Director of Admissions, Records and School/College Relations, California State University, Sacramento to Beatrice S. Tylutki, dated July 25, 1984

P-17 Letter from Lieutenant Colonel John Louis Conway to Beatrice S. Tylutki, dated July 19, 1984, and a letter from Lieutenant Colonel John Louis Conway of the same date enclosing Mr. Jones's Army Personal Record.

P-18 Marked for identification only

P-19 Transcript of the interview of Eugene Jones regarding his casino application held on December 6, 1983.

WITNESSES

FOR THE PETITIONER:

Eugene Jones

FOR THE RESPONDENT:

Anthony H. LoCicero

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-66
OAL DOCKET NO. CCC 6301-84
APPLICATION NO. 45551-22

APPLICATION OF JOHN T. KESS :
FOR A CASINO EMPLOYEE LICENSE :

AMENDED FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 6, 1985,

IT IS on this 21st day of May 1985, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the application of John T. Kess is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof;

IT IS FURTHER ORDERED that denial of this casino employee license application shall not prevent John T. Kess from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that John T. Kess is prohibited from applying for any license, registration,

qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8;

IT IS FURTHER ORDERED that copies of this amended final order be served upon the applicant, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6301-84

AGENCY DKT. NO.84-EA-66

JOHN T. KESS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

John T. Kess, petitioner, Pro Se

Ralph L. Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: November 8, 1984 Decided: December 24, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of John T. Kess to the Casino Control Commission for licensure as a casino employee, permitting him to work in a casino as a maintenance and cleaning employee. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner, with specific reference to his record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of sections 86d and 90e of the Casino Control Act.

2. Whether the petitioner has established, by clear and convincing evidence, his reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act as incorporated in section 90 of the Act.

PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated March 15, 1984, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on August 23, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq..

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 66 year old resident of Tuckerton, New Jersey, and he has been a painter and paperhanger for approximately 45 years. In addition to himself, he supports his wife in a nursing home and his two granddaughters.

From August 1982 until April 1984, the petitioner was employed by the Claridge Casino Hotel as a painter and paperhanger, pursuant to a temporary casino employee license. Subsequently, the petitioner has practiced his trade through assignments from local union No. 277 of the International Brotherhood of Painters and Allied Trades in Atlantic City, New Jersey. On occasion, the union assignments would place him for a week or so at a time in licensed casino facilities.

By letters dated June 29, 1984 (Exhibits P-1 through P-3), George Duberson, Director of Facilities, Walter Keene, Shift Suprvisor, and Emil Neumann, Chief Engineer, of the Claridge Hotel & Casino, offered their opinion that the petitioner was a loyal, conscientious, trustworthy and honest employee. By letter dated August 1, 1984, (Exhibit P-4), Local Union No. 277 Business Manager, James T. Brennan stated that the petitioner is a hard-working and dependable employee who has a spotless record since his affiliation with Local Union No. 277 and during his employment by the Claridge Hotel & Casino.

It is undisputed that the petitioner was arrested by the Atlantic City Police Department in 1936 and 1937 for auto theft. The charges with respect to both incidents were dismissed. In 1941, the petitioner was arrested and subsequently convicted of desertion and non-support. According to the petitioner, this conviction resulted in his incarceration for a period of thirty (30) days. The petitioner's last arrest occurred in 1956, when he was charged by the Philadelphia Police Department with rape, assault and aggravated assault. According to the petitioner, these charges arose from a dispute which he had with his girlfriend. He pled guilty to the offense of impairing the morals of a minor and he was sentenced to 18 months probation and ordered to pay a fine.

It is undisputed that the petitioner failed to disclose any of these arrests and convictions on his personal history disclosure form filed with the Casino Control Commission. When asked at the hearing why he had not disclosed his arrest and conviction record on his personal history disclosure form, the petitioner stated that he thought the Commission might not consider anything about the arrests and convictions since they were so old and he thought disclosing them would affect his chances of getting a job.

In February 1984, a Division of Gaming Enforcement investigator conducted a telephone interview of the petitioner while the petitioner was in the facilities department office at the Claridge Casino Hotel. The petitioner acknowledged that he was asked by the investigator if he had ever been arrested and he told the investigator that he had not been arrested. The petitioner explained that there were other people present and he did not want them to know that he had been arrested for different offenses. The petitioner denied his arrests even when the investigator confronted him with information about them. The only arrest to which he would admit was his arrest for non-support.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to Section 90 of the Casino Control Act, (N.J.S.A. 5:12-1 et seq.), which incorporate the licensing criteria set forth in section 89, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for

good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the Act. Section 86b provides that licensure shall be denied to any applicant who has failed to reveal any fact pertaining to the qualification criteria.

It is undisputed that the petitioner failed to reveal on his personal history disclosure form and to a Division of Gaming Enforcement investigator that he had a record of arrests. The credible evidence in the record establishes that one of the reasons that the petitioner failed to reveal this material information, was that he thought its disclosure would affect his chances of obtaining casino employment. Thus, the failure to disclosure was not inadvertent, but intentional, and I **CONCLUDE** that the petitioner has failed to disclose facts material to qualification, within the meaning of sections 86b and 90e of the Casino Control Act.

The credible evidence in the record establishes that the petitioner presently enjoys a reputation for good character, honesty and integrity. In addition, his last criminal involvement occurred in 1956. However, the petitioner's intentional failure to disclose material information prevents him from establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, and I so **CONCLUDE.**

ORDER OF DISPOSITION

Accordingly, for the foregoing reasons, it is **ORDERED** that the application of the petitioner, John T. Kess, for a casino employee license permitting him to work in a casino as a maintenance and cleaning employee, be denied.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 6301-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 24, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/28/84
DATE

Mary Ann Borczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 02 1985
DATE

Ronald L. Parker/pab
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHBITS

For the Petitioner:

P-1 Letter, dated June 29, 1984
P-2 Letter, dated June 29, 1984
P-3 Letter, dated June 29, 1984
P-4 Letter, dated August 4, 1984

For the Respondent:

R-1 Not in evidence

WITNESSES

For the Petitioner:

John T. Kess

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 0274-11
LICENSE NO. 03182-21
AGENCY DOCKET NO. 84-EA-56 AND
84-195
OAL DOCKET NO. CCC 3787-84 AND
CCC 4729-84 (CONSOLIDATED)

IN THE MATTER OF THE APPLICATION

OF BARBARA M. KILBANE FOR A

CASINO KEY EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

BARBARA M. KILBANE,

Respondent.

FINAL ORDER

These matters having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 24, 1984, recommending that the complaint of the Division of Gaming Enforcement seeking, among other things, revocation of Barbara M. Kilbane's casino employee license be dismissed and that the application of Barbara M. Kilbane for a casino key employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on November 16, 1984, to which Barbara M. Kilbane filed a

reply on December 3, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on December 12, 1984, to affirm and adopt the said Initial Decision and to dismiss the complaint and grant the application,

IT IS on this 14th day of JANUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement seeking, among other things, revocation of Barbara M. Kilbane's casino employee license is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the application of Barbara M. Kilbane for a casino key employee license be and hereby is granted based upon the reasons set forth in the Initial Decision; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Barbara M. Kilbane and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
LICENSE NO. 00357-11
AGENCY DOCKET NO. 84-EA-61
OAL DOCKET NO. CCC 3787-84

IN THE MATTER OF THE APPLICATION
OF JOHN R. KILBANE, JR.
FOR RENEWAL OF HIS CASINO KEY
EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 24, 1984, recommending that the application of John R. Kilbane, Jr. for renewal of his casino key employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on November 16, 1984, to which John R. Kilbane, Jr. filed a reply on December 3, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on December 12, 1984, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 14th day of JANUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of John R. Kilbane, Jr. for renewal of his casino key employee license be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon John R. Kilbane, Jr. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 3787-84 and
CCC 4729-84
(CONSOLIDATED)
AGENCY DKT. NOS. 84-195
84-EA-56 and 84-EA-61

APPLICATION OF BARBARA M. KILBANE FOR A CASINO KEY EMPLOYEE LICENSE (CCC 3787-84) AND APPLICATION OF JOHN R. KILBANE, JR., FOR RENEWAL OF HIS CASINO KEY EMPLOYEE LICENSE (CCC 3787-84).

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner,
v.
BARBARA M. KILBANE,
Respondent.

Nicholas Casiello, Jr., Esq. represented the Kilbanes (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Ralph L. Fusco, Deputy Attorney General, represented the Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: September 7, 1984 Decided: October 23, 1984

BEFORE **VALERIE H. ARMSTRONG**, ALJ:

New Jersey Is An Equal Opportunity Employer

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Barbara M. Kilbane applied for a casino key employee license and her husband, John R. Kilbane, Jr., applied for renewal of his casino key employee license. By letter dated March 15, 1984, the Division of Gaming Enforcement (Division) objected to the casino key employee licensure of Barbara M. Kilbane, and by letter dated March 16, 1984, the Division objected to the renewal of John R. Kilbane, Jr.s', casino key employee license. Those matters were consolidated under docket numbers CCC 3787-84.

By complaint filed on May 31, 1984, the Division sought to revoke Barbara Kilbane's casino employee license based upon the same factual allegations set forth in the March 15, 1984 letter. The revocation complaint filed under docket number CCC 4729-84 was consolidated with the licensure applications of John Kilbane, Jr. and Barbara Kilbane, in the interest of judicial economy, since the matters involve common questions of law and fact.

A prehearing conference was held in the above-entitled matters resulting in a prehearing order dated July 25, 1984, which defined the issues to be addressed at the hearing. The Division alleged that John R. Kilbane, Jr. and Barbara Kilbane joined the Freedom Church of Revelation for the purposes of evading 1982 federal income taxes which was improper under the Internal Revenue Code and is tantamount to fraud. Based upon those allegations, the following issues were addressed at the hearing:

1. Do Mr. and Ms. Kilbane possess the good character, honesty and integrity as required by N.J.S.A. 5:12-89 (b)2?

2. Do Mr. and Ms. Kilbane possess the financial stability, integrity and responsibility required by N.J.S.A. 89(b)1?

3. Does the conduct of Mr. and Ms. Kilbane consitute a violation of 26 U.S.C.A. § 7201, which would be equivalent to a violation of N.J.S.A. 2C:20-1?

4. In the event that Ms. Kilbane's conduct is a violation of N.J.S.A. 2C:20-1, can she demonstrate her rehabilitation pursuant to N.J.S.A. 5:12-90h?

A hearing was held at the Pleasantville Municipal Court, Pleasantville, New Jersey on August 27, 1984 with the record remaining open until September 7, 1984, to permit the the filing of post-hearing briefs.

FINDINGS OF FACT

Barbara Kilbane, age 36 years, is a high school graduate who attended dental assistant school and worked for ten and a half years in the dental field. From August 1979 until October 1980, she dealt blackjack and roulette at Caesar's Boardwalk Regency Hotel and Casino. From October 1980 until May 1982, she was employed as a floor person in blackjack and roulette. From May 1982 until January 1984, she was employed as an executive casino marketing host. In 1984 she began working as a baccarat dealer. She holds a floor license for blackjack and roulette, and has a baccarat dealer's license. There has been no action taken against her licenses by the Division or the Casino Control Commission (Commission), until this proceeding.

During the latter part of 1981 or early 1982, some co-workers told Ms. Kilbane about the Freedom Church of Revelation (FCR). She was informed that seminars concerning this organization were being held at various casinos, and that participation in this organization might be a good way to save tax dollars. Florence Cooper (a dealer) suggested that Ms. Kilbane arrange a home meeting with a church representative to learn more about the FCR. During late March 1982, Ms. Kilbane (who was then known as Barbara Melko), John R. Kilbane, Jr. (her then future husband) and William Murphy and Phillip Bush (FCR ministers) held a four-hour meeting at Ms. Kilbane's home. During the meeting, Mr. Murphy and Mr. Bush told Ms. Kilbane about the origination of the FCR, its charitable activities and how membership in the FCR could save tax dollars. They told Ms. Kilbane that if she wanted to join the church, she would have to contribute ten percent of her previous year's wages, which in her case would be $3,600. The $3,600 would be allocated as $3,300 as a donation to the FCR, and $300 which was to be applied toward educational books and legal fees. She was advised that the $300 was not tax deductible.

At the meeting, Ms. Kilbane and Mr. Kilbane were extremely skeptical about what effect participation in the FCR would have upon their casino licenses. However, Ms. Kilbane knew of other casino employees who were members, and during the meeting,

she was advised that many casino employees were involved in the FCR. She was also told by Mr. Bush and Mr. Murphy that the FCR had an attorney, one William DeMarco, who approved all FCR matters. She was further advised that the FCR's main headquarters were located in Florida, but that the FCR's local fellowships performed numerous charitable functions, such as providing dinners for poor people and wheelchairs for persons with cerebral palsy. She was told that the FCR parent church was attempting to purchase land to build nutrition centers for needy persons.

During the initial meeting, various documents were shown to Mr. and Ms. Kilbane by Mr. Murphy and Mr. Bush, including the following:

1. Letter dated June 8, 1979, from Cornelius J. Coleman, District Director of the Internal Revenue Service (IRS) stating that the IRS determined the FCR to be an organization exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code and further stating that donors may deduct contributions to the FCR as provided in Section 170 of the Code (P-1). (This document was introduced for the limited purpose of demonstrating Ms. Kilbane's state of mind in assessing the status of the FCR with the IRS.)

2. Cumulative list of organizations (revised to October 31, 1981), described in Section 170 (c) of the Internal Revenue Code of 1954 (P-2).

   Page 369 listed the "Freedom Church of Revelation, Hohokus, N.J." as an organization for which contributions are tax deductible pursuant to Section 170 of the Internal Revenue Code. (Mr. Bush and Mr. Murphy also pointed out other organizations in the book which were tax exempt, including the J.D. Rockefeller, Jr. Trust for American Baptist Churches. Ms. Kilbane perceived the purpose of showing her the cumulative list of organizations was to lend credibility to the FCR's tax status.)

3. Certificate of Registration, State of New Jersey, Department of State, for the FCR (P-3). (Ms. Kilbane was told by Mr. Bush and Mr. Murphy that the document was evidence that the FCR was registered with the State of New Jersey as a charitable organization.)

4. Exempt organization certificate, form ST-5, State of New Jersey, Division of Taxation, Sales Tax (P-4). (Ms. Kilbane was told that no sales tax would have to be paid to the State of New Jersey for purchases made solely and exclusively for the FCR.)

At the initial meeting, Mr. Bush and Mr. Murphy told Mr. and Ms. Kilbane that if they joined the FCR they could deduct all of their personal expenses, with the exception of food and servants.

For several months after the initial meeting, Mr. Kilbane and Ms. Kilbane contemplated whether they would join the FCR. During this time, they frequently talked to Mr. Murphy on the telephone about their doubts. They did not discuss joining the FCR with any persons other than FCR members. During that time, Ms. Kilbane did not have a family attorney with whom she could discuss the matter. In June 1982, Ms. Kilbane joined the FCR. Pursuant to instructions of Mr. Bush and Mr. Murphy, she made a donation to the FCR in the amount of $3,300 (P-5). She paid the additional $300 to the FCR for educational materials and church legal fees (P-6). She was ordained at a ceremony in Cherry Hill, New Jersey. She recalls that she raised her right hand in front of a church Bishop and repeated an oath. Ms. Kilbane was not required to undergo any tests or training prior to her ordination.

Ms. Kilbane was granted a Certificate of Ordination (P-8) and she received a charter certifying that she had started her own FCR congregation (P-9). She also received a letter from the Reverend Louis J. Tomaselli, Executive Director of the FCR stating that a resolution had been passed by the church at a special meeting on March 1, 1980, granting the Minister and Secretary of each FCR congregation the right to transact business for the congregation (P-10). That resolution authorized the establishment of congregation bank and securities accounts, and authorized the minister to buy and sell gold, silver, and real estate and permitted the minister to conduct other lawful property transactions.

In approximately March or April 1983 Ms. Kilbane received a revised 69 page booklet published by the FCR which contained the following information pertaining to the church (P-18):

1. Church Credo.
2. Rules of the Council and Church.
3. Guidelines for establishing a local congregation.
4. Local congregation resolutions and worksheets.
5. Quarterly reports, memorandums and miscellaneous information.

The booklet advised the congretions how to approach and deal with issues involving the IRS. Page 68 of the booklet establishes the procedure for handling IRS or government correspondence, and specifically advises all ministers who are contacted by the IRS to immediately communicate with William DeMarco, Esquire, the church attorney.

Consistent with church policy and guidelines, Ms. Kilbane opened a checking account and savings account in the name of the Freedom Church of Revelation Congregation No. HO2635T. Ms. Kilbane also maintained a personal checking account, into which she would deposit money. She would then write checks from her personal checking account (P-19) made payable to the Freedom Church of Revelation, which checks were then deposited into her FCR congregation checking account. Ms. Kilbane paid her personal bills from her congretation checking account (with the exception of food and servants). The personal checks which Ms. Kilbane deposited into the church checking account were considered by her and FCR policy to be donations. Church policy required Ms. Kilbane to file quarterly reports for her congregation stating the amount of funds she donated to the church (P-11). The quarterly report contained a section titled Charity Responsibility Fund Donation, which required the congregation to remit two percent of the total amount of quarterly donations to the FCR International Treasurer, in Boca Raton, Florida.

The payment of the minister's personal bills from the church checking account was pursuant to a FCR form entitled Local Parsonage Allowance Resolution (P-16) which stated in its preamble "WHEREAS it is right and proper for the Members and Trustees of the Church to provide for their Minister's parsonage allowance, as remuneration for the ministerial duties thereof, as provided in 26 U.S.C. 107...." The resolution further stated that the members of the congregation were urged to freely tithe "...for the maintenance of the Ministers or the Church as commanded by the Word of God...", with the resolution then listing the expenses which could be paid by the congregation on behalf of the minister. The resolution specifically referred to IRS regulation 1.1071 stating that

the regulation permitted the parsonage allowance to include expenses directly related to providing a home for the minister, with the exception of expenses for food or servants.

The church checking account required the signatures of two trustees. The trustees for Ms. Kilbane's congregation were Ms. Kilbane and Florence Cooper, who was not a member of the FCR because she could not afford it. The only persons who made donations to Ms. Kilbane's congregation were Ms. Kilbane and Mr. Kilbane.

When Ms. Kilbane was ordained, she was advised that she could perform sacraments, including marriage ceremonies. (The FCR has its own marriage certificate (P-14)). On August 6, 1982, Ms. Kilbane, Mr. Kilbane and Florence Cooper, executed a resolution to establish procedures for trustees and successor trustees to provide for the control and authority over Ms. Kilbane's church in the event of her death (P-17). The FCR instructional booklet (P-18) also states that the resolution acts as a "will" for the congregational assets. The resolution also contains a reference to Section 501(c)(3) of the Internal Revenue Code.

Ms. Kilbane's perception of a charitable contribution is money donated to help others. She stated that she had made charitable donations prior to joining the FCR but she never received anything in return for her donation. That is one reason why she was skeptical after the orientation meeting prior to joining the FCR. She joined the FCR after coming to the conclusion that she and the church would benefit, in that she would save tax dollars, and the FCR would receive a donation toward its charitable goals through her initial contribution of $3,300 plus two percent of all subsequent donations which she made to her congretation.

Ms. Kilbane's understanding of a church was a "house of God." Ms. Kilbane attended a Catholic church while she was growing up, but was ultimately ex-communicated when she divorced her first husband.

On cross-examination, Ms. Kilbane admitted the following:

1. As a minister, she did not preach the gospel.

2. She did not personally attempt to reach out to the poor or needy.

3. Her congregation did not have a distinct religious history.

4. Her congregation did not have a religious doctrine or literature.

5. While the congregation did hold meetings, there was no established place of worship and no Sunday schools for the instruction of young people.

6. While various local congregations held joint fellowship meetings once a week in Cherry Hill, New Jersey, Ms. Kilbane never attended any of those meetings because they were held at night during times that she was working.

Ms. Kilbane did not seek individual tax exempt status for her local congregation because she felt it was her duty to pay some income taxes and she was also under the impression that her local congregation was exempt due to its affiliation with the FCR parent church.

Ms. Kilbane claimed a $12,505 charitable deduction to the FCR on her 1982 Federal Income Tax Return (P-20). The income tax return, filed in February 1983, reported a federal income tax liability of $4,721.00, which resulted in Ms. Kilbane receiving a $3,470.00 refund. The $12,505.00 charitable deduction included the initial donation of $3,300.00 plus her quarterly contributions and the two percent of the quarterly contributions donated to the parent church. Ms. Kilbane was notified in November 1983, that she would be auditted by the IRS for the tax 1982 year. In January 1984, Ms. Kilbane was notified that as a result of the audit, the IRS was disallowing the charitable deductions to the FCR, resulting in an additional tax assessment of $4,026.00 and $201.30 in penalties (the penalty was assessed for "negligence") (P-22). On January 25, 1984, Ms. Kilbane paid $4,227.30 to the IRS (P-23). Ms. Kilbane has never been audited by the IRS other than for the 1982 tax year, and she is not aware of any further action being taken on her 1982 federal income tax return.

On July 8, 1983, Ms. Kilbane resigned from the FCR pursuant to letter dated July 8, 1983 addressed to the presiding Archbiship, Board members and International Treasurer (P-21). She resigned after having read some FCR newsletters which indicated that the church was experiencing problems with the IRS. When Ms. Kilbane resigned her

ministry there was approximately seven dollars left in the church checking account. Ms. Kilbane completed a final quarterly report to dispose of the remaining funds.

Ms. Kilbane was requested by her employer to apply for a casino key employee license. She completed her Personal History Disclosure Form - 1 on August 31, 1982. During the early part of 1983 she met with a Division investigator and told him about her involvement in the FCR.

When John R. Kilbane, Jr., age 36 years, married Barbara Melko (now known as Barbara Kilbane) on January 5, 1983, he automatically became a member of the FCR, although he was never ordained as a minister. His name appeared on Ms. Kilbane's FCR congregation bank accounts in anticipation that he would ultimately be ordained. However, the Kilbanes resigned from the FCR prior to his ordination. Mr. Kilbane signed the resignation letter as "Reverend" John R. Kilbane because Ms. Kilbane felt such a designation was better for "legal" reasons.

Mr. Kilbane was in the Air Force for four years after his high school graduation. He then became employed at the Fremont Hotel in Las Vegas where he learned how to deal blackjack at the gaming tables. He has been employed in the casino industry as a blackjack, roulette and bacarrat dealer. He has also worked as a floorperson, pit boss, assistant shift boss, and shift manager. Mr. Kilbane is presently a casino key employee licensee and is licensed by the New Jersey Casino Control Commission for the following positions: pit boss/blackjack, pit boss/roulette, and shift manager.

Mr. Kilbane was present at the FCR meeting attended by Barbara Kilbane, Mr. Bush and Mr. Murphy. Mr. Kilbane watched Mr. Bush and Mr. Murphy draw illustrations to explain the FCR's background; i.e., when the FCR came into existence, how many members it has, and the nature of its charitable functions. Mr. Bush also told Mr. Kilbane how to set the church bank accounts and how membership in the FCR could save tax dollars. Mr. Kilbane listened to the presentation and then began to ask numerous questions as to why the FCR did not have more members if the tax ramifications of membership in the FCR were legal and beneficial. Mr. Kilbane also asked Mr. Bush how FCR membership would affect his casino license. Mr. Bush told him that if the IRS accepted the FCR as a legitimate charitable organization, then the Casino Control Commission would "assuredly" accept it. Mr. Bush stated that during his four year FCR

membership he has not had any negative repercussions from the IRS. His main concern was how membership would affect his license. Mr. Kilbane's interpretation at the initial meeting of P-1 (IRS letter dated June 8, 1979) was that the IRS granted legitimacy to the FCR by recognizing it as a non-profit charitable organization. He recalls that Mr. Bush in showing him P-2 (cumulative list of exempt organizations) dwelled upon the Rockefeller charitable organizations. Mr. Kilbane's reaction to P-2 was that the FCR was recognized by the IRS as a legitimate organization, and that the individual FCR congregations had tax-exempt status through the parent church. At the initial meeting, he also felt that exhibits P-3 and P-4 were further evidence of the FCR's legitimacy and favorable tax status. However, Mr. Kilbane's feeling after the four hour meeting was that the situation appeared to be "too good to be true." Mr. Kilbane talked to Mr. Bush and Mr. Murphy several times over the telephone after the initial meeting, prior to Ms. Kilbane joining the FCR.

Mr. Kilbane did not consult with his own attorney before attempting to utilize the alleged favorable tax status of the FCR. He was informed at the initial meeting that the FCR had its own attorney and he was under the impression that the FCR's attorney would represent church members "if there were any problems." Mr. Kilbane had utilized an attorney prior to his involvement in the church for a prior divorce proceeding. He also did not consult with an accountant prior to becoming involved with the FCR, feeling that the documents which had been shown to him during the first meeting were evidence that the FCR was legitimate.

Mr. Kilbane did not discuss joining the FCR with anyone other than Ms. Kilbane. He had initially heard about the FCR through a friend who told him that there was to be a FCR seminar at Bally's Park Place Hotel Casino. Mr. Kilbane did not attempt to recruit any other members for the church. His purpose in joining the FCR was to realize a tax benefit.

Mr. Kilbane filed a 1982 federal income tax return (P-27), wherein he reported gross income of $60,500. He claimed a charitable deduction of $8,188 which was donated to Barbara Kilbane's FCR congregation. Over approximately a six month period, Mr. Kilbane made checks payable to the congregation, which were endorsed by Barbara Kilbane, and then placed into her FCR congregation checking and/or savings account. By making the FCR donations, Mr. Kilbane fully expected to receive a tax benefit. During the time that Mr. Kilbane made these donations to the FCR, he was residing with

Ms. Kilbane and sharing the household bills. Many of these bills were paid from Ms. Kilbane's congregation checking account, including telephone, electric, rent, TV cable and apartment insurance premiums. Mr. Kilbane's personal credit card bills were not paid from the church account. The 1982 donations to the FCR were made prior to Mr. Kilbane's marriage to Ms. Kilbane. However, Mr. Kilbane was a trustee for the congregation checking account, although, he never signed any checks. Mr. Kilbane made no other charitable contributions during 1982. Ms. Kilbane decided to whom the checks drawn upon the congregation account were to be paid.

As a result of the charitable deduction which Mr. Kilbane claimed on his 1982 income tax return, he received a refund of $5,158. As a result of Ms. Kilbane's IRS problems, Mr. Kilbane filed an amended tax return for 1982 (P-28, P-29).

The parties filed a joint income tax return for 1983, claiming charitable contributions of $200, which contributions were unrelated to the FCR.

Both Mr. Kilbane and Ms. Kilbane regret their involvement in the FCR and are extremely skeptical about joining any other organizations to obtain favorable tax status.

William Bush, age 34 years, is an operator for the New Jersey Transit Company. He joined the FCR in 1980 and was ordained as a minister. He still maintains his FCR membership. Mr. Bush described the FCR as consisting of approximately 3,000 members nationwide, with the church's activities being described as "educational, charitable, scientific, religious, also the prevention of cruelty to children and animals." Mr. Bush is involved in what he referred to as the "charitable" activities of the church. In 1980, Phillip Murphy formed a fellowship committee over which Mr. Bush served as president for several years, with the committee's function being to raise funds for other "charitable" organizations. Mr. Bush worked for various "charitable" projects prior to joining the FCR. He joined the FCR when he realized that he was short of money each week after paying his bills. He wanted to be able to "better direct" his tax dollars.

In March 1982, Mr. Bush participated in the orientation seminar with Barbara and John Kilbane after having received a phone call from Florence Cooper that Ms. Kilbane desired to know more about the FCR. Mr. Bush stated that the initial presentation usually lasts from two to two and one half hours, however, the Kilbane meeting was substantially longer due to numerous questions raised during the meeting by

the Kilbanes. During the presentation, he reviewed various documents with the Kilbanes. Mr. Bush showed the Kilbanes various entries in the cumulative list of tax exempt organizations (P-2). He further explained that the State of New Jersey recognized the church as a legitimate organization (P-3, P-4).

Mr. Bush cited the following specific examples of charitable activities in which the church is involved: raffles, yard sales and garage sales with the proceeds of the sale being contributed to the fellowship committee.

At the initial meeting, Mr. Bush's discussion with the Kilbanes concerning the tax benefits of joining the FCR was quite specific. Mr. Bush discussed his understanding and interpretation of sections 501(c)(3) and 170 of the Internal Revenue Code. He also discussed various IRS publications, specifically, publications 517, 525, and 526 which dealt with tax benefits for ministers and explained the use of congregational funds for minister's expenses. Mr. Bush told the Kilbanes that if they became FCR ministers, they could receive the tax benefits specified in those publications. Mr. Bush was not sure whether the IRS publications applied only to the parent church as opposed to the individual congregations. Mr. Bush told the Kilbanes that pursuant to section 170 of the Internal Revenue Code they could apply fifty percent of their income toward charitable contributions and receive a tax deduction. He apparently did not specifically tell the Kilbanes that they could use their contributions to the FCR for living expenses, but he said they could use the contributions for "expenses of their ministry."

James Murphy, age 49 years, is employed by the Deptford Township Board of Education as a truck and bus mechanic. He is an FCR minister, having joined the church in 1979. Mr. Murphy participated with Mr. Bush at the Kilbane orientation meeting in March 1982. Mr. Murphy's purpose in attending the meeting was to introduce the Kilbanes to the church and to show them that it was a charitable organization. Mr. Murphy's testimony confirmed much of the testimony given by Mr. Bush, however, he offered some additional insight into the FCR and the circumstances pursuant to which the Kilbanes became involved in the organization.

Mr. Murphy stated that William A. DeMarco, Esquire not only did the legal work for the FCR but approved of any literature utilized for FCR purposes. Mr. DeMarco specifically approved exhibits P-1 through P-4 to be shown to prospective FCR members. Mr. Murphy's perspective on the FCR's function is that its purpose is to do charitable

deeds on a local level. Mr. Murphy specifically advised the Kilbanes that they might be able to save income taxes by joining the FCR and he utilized literature approved by Mr. DeMarco to explain the tax ramifications. He told the Kilbanes they could possibly have their personal expenses paid through their donations to the FCR if they participated in charitable works on a local level. Mr. Murphy recalled receiving numerous phone calls from both Barbara and John Kilbane after the initial meeting and prior to Barbara Kilbane's ordination. Mr. Murphy told the Kilbanes that if he could not answer any of their questions he would contact Mr. DeMarco for advice.

Mr. Murphy's interpretation of P-1 was that the tax exempt status applied to the local congregations as well as the parent church. He told the Kilbanes that if the parent church was exempt pursuant to section 501c of the Internal Revenue Code, that individual congregations would also be exempt, since they came under the ". . . umbrella of the parent church."

Charles Wunder, is a part-time executive marketing host at the Sands Hotel Casino and holds a casino key employee license. He also has a licensed detective business in Pennsylvania and New Jersey. He was previously employed as the chief investigator at Playboy Hotel Casino for one year and was employed in various departments of the United States Government for a total of 13 years. Mr. Wunder has known Barbara and John Kilbane for the past three years, both professionally and socially. His opinion of Barbara Kilbane is that she has been a "pillar" in the casino community and he has never heard derogatory remarks about her. Mr. Wunder knows several people who have worked with John Kilbane and he is aware of the responsibility Mr. Kilbane assumes in his course of employment. He has never heard any derogatory remarks or comments about Mr. Kilbane. While the Kilbanes have confided in him concerning personal matters, Ms. Kilbane did not discuss her FCR membership with Mr. Wunder until after she joined the organization.

Linda Korn holds a casino key employee license and is licensed in blackjack and bacarrat. She has been employed for the past four years at the Sands Hotel Casino as a pit boss. She has known Barbara and John Kilbane professionally and socially for the past five years. Ms. Korn described Barbara Kilbane as an "outstanding" person who has a reputation for being reliable and honest. Likewise, Ms. Korn stated that Mr. Kilbane has a very good reputation for being an honest and reliable person. While Ms. Korn socializes with the Kilbanes, they did not attempt to involve her in the FCR.

Jack Stuart is a graduate of the City College of New York with a bachelor's degree in business administration. He has been employed for 31 years by the General Accounting office of the United States Government. He has known Barbara and John Kilbane for the past four years and sees them frequently. His opinion of Barbara Kilbane is that she is "wholesome, with an extremely good character, a fundamentally sound attitude, and other people hold her in high regard." Mr. Stuart has the highest regard for John Kilbane. The Kilbanes did not discuss their involvement with the FCR with Mr. Stuart until several weeks prior to this hearing.

John F. Dally is an assistant shift manager who has known Mr. Kilbane for approximately five years. Mr. Dally was of the opinion that Mr. Kilbane has maintained an "honest and loyal reputation" (P-33).

DISCUSSION AND CONCLUSIONS OF LAW

26 USCA § 7201 provides the following:

> Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony. . . .

It is clear that a violation of 26 USCA § 7201 must result from willful or deliberate conduct. In United States v. Berger, 325 F.Supp. 1297, 1303, affirmed 456 F.2d 1349, cert. denied 83 S.Ct. 110, 409 U.S. 892, 34 L.Ed. 2d 149, the term "willful" as it applies to attempts to evade or defeat federal income taxes was defined as

> . . . deliberate, voluntary and purposeful action, with a specific wrongful intent to violate the law, as distinguished from inadvertent or accidental, or an honest misunderstanding of what the law requires or permits. Various terms have been used to define willfulness or guilty knowledge, such as fraudulent intent, an evil motive, a bad motive, or a vicious will. . . . It has also been defined as a state of mind of a person wherein he is fully aware of the existence of a tax obligation which he seeks to conceal or evade. . . .

Spies v. United States, 317 U.S. 492, 499 is the leading case involving with the element of willfulness and specifically states:

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> We would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual and transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal. . . .

At the hearing, Barbara Kilbane openly acknowledged that she joined the FCR and was ordained as a minister primarily for the purpose of saving tax dollars. Likewise, John Kilbane admitted that he made contributions to Ms. Kilbane's FCR congregation for the purpose of receiving a tax benefit.

Charitable contributions which are subsequently deducted on a federal income tax return, but which are ultimately disallowed by the IRS, does not necessarily give rise to a violation of 26 U.S.C.A. § 7201. The term "willful" as utilized in the statute and as interpreted by substantial case law, clearly requires consideration of the state of mind and conduct of the person claiming the deduction. While the Kilbanes were desirous of saving tax dollars, they did not immediately rush into involvement with the FCR. The testimony is undisputed that the initial meeting between the Kilbanes and Bush and Murphy took substantially longer than most initial FCR meetings due to the Kilbanes' questioning of the FCR's tax status and practices. A period of several months passed before Barbara Kilbane actually joined the church, during which time, both she and Mr. Kilbane continued to question Bush and Murphy about the FCR. During the initial meeting, the Kilbanes reviewed certain documentation (P-1, P-2, P-3, P-4) which at least in their minds lent a facade of legitimacy to the FCR's tax status. Further, Bush and Murphy both explained their participation in the FCR in detail, including the fact that at the time of the orientation session they had not experienced any problems with the IRS. Also of significance is the impression left with the Kilbanes that the FCR's attorney appeared to have significant influence over FCR legal matters, including approval of documents to be shown to prospective members.

Counsel for the Division questioned the Kilbanes' motives by noting the following:

1. Ms. Kilbane was ordained as an FCR minister by simply paying a ten percent initiation fee and undergoing a very brief ordination ceremony.

2. Neither Ms. Kilbane nor Mr. Kilbane assumed any church-related functions.

3. Ms. Kilbane became a minister in a church in which there was no indicia of what counsel perceived to be evidence of a traditional organized religion, i.e., "no bibles, no meetings, no symbols."

Whether the Kilbanes engaged in enough "religious" traditions or conduct to meet the Division's concept of sufficient religious activity is not really the issue. The issue is whether Ms. Kilbane's admission that she joined the FCR for the primary purpose of saving save tax dollars when considered with the IRS audit resulting in the assessment of additional taxes is sufficient evidence to constitute a willful violation of 26 U.S.C. § 7201. Likewise, does Mr. Kilbane's admission that he made donations to Ms. Kilbane's FCR congregation in order to save tax dollars constitute an attempt to willfully evade or defeat federal income taxes? I conclude that neither Ms. Kilbane nor Mr. Kilbane attempted to deliberately defeat or evade income taxes within the meaning of 26 U.S.C. § 7201. While I would characterize their conduct in claiming the FCR deductions as "naive," naivete does not in and of itself constitute wilfull income tax evasion. The Kilbanes' lengthy consideration of the FCR prior to Ms. Kilbane's ordination, as well as their conduct after her audit, supports this conclusion.

Additionally, there is no question but that Ms. Kilbane's establishment of the FCR congregation bank account through which she then paid her personal bills, was consistent with the church rules set forth in P-18. Further, Bush and Murphy conveyed an aura of ligitimacy regarding the FCR's status with the IRS. The Division in its post-hearing memorandum characterized Ms. Kilbane's actions in satisfying the deficiency owed and the filing of Mr. Kilbane's amended return as being self-serving. While the payment of the additional tax (and penalty) and the filing of an amended return was certainly self-serving, it is also evidence of appropriate corrective behavior and acknowledgement that they made a mistake in judgment. Mr. Kilbane voluntraily amended his return when he realized that the tax status of the FCR was questionable, at least as it applied to Ms. Kilbane's congregation. Neither of the Kilbanes claimed any further charitable deductions to the FCR for 1983. Ms. Kilbane also sent a letter of resignation to the FCR on behalf of her and Mr. Kilbane in July 1983. Ms. Kilbane voluntarily disclosed information to a Division investigator concerning her participation in the FCR, which ultimately led to this proceeding. The Kilbanes did not attempt to

conceal income. Their 1982 tax returns specifically stated that donations were made to the FCR, citing the congregation number, as well as the IRS employer identification number. There was no attempt to disguise the organization to which the contributions were made. Further, neither party has had any prior or subsequent problem with the IRS. Since I have concluded that the Kilbanes did not violate 26 U.S.C.A. § 7201, I need not address the issue of an equivalent violation of New Jersey's Criminal Code, or the issue of Ms. Kilbane's rehabilitation.

The Division alleges that the Kilbanes' conduct demonstrates that they lack the good character honesty and integrity as required by N.J.S.A. 5:12-89b(2) and that they lacked the financial stability, integrity and responsibility required by N.J.S.A. 5:12-89b(1). Specifically, the Division alleges in its post-hearing memorandum that the filing of one income tax return resulting in disallowable charitable deductions does not in and of itself warrant a finding that the Kilbanes did not possess the requisite good character, honesty and integrity, but rather, the Kilbanes' entire course of conduct in joining the FCR and participating in the FCR's procedures in an attempt to save tax dollars is significant. Specifically, the Division states "clearly this was not a single isolated incident. . . . Here there are a series of occurrences which reflect negatively upon the Kilbanes' good character." The post-hearing memorandum further states: "The law concerning this type of scheme is well settled. In cases provided by the Division at the time of the hearing, the use of monies given to a charitable organization cannot inure to the benefit of one of the donors." Without a doubt, that concept is probably what led to Ms. Kilbane's audit. The course of conduct in which the Kilbanes engaged in establishing an FCR congregation checking account and writing checks from the account which inured to their personal benefit was consistent with the FCR rules (P-18). As a practical matter, without the entire course of conduct, the Kilbanes would not have been able to claim the FCR charitable deduction. Hence, I place no significance upon the Division's argument that the Kilbanes' conduct constitutes a "series of occurrences" which gives greater weight to the argument that they have engaged in behavior which reflects negatively upon their personal and financial character, integrity and responsibility. The "series of occurrences" relates to one ultimate event, i.e., the filing of one income tax return for which certain FCR deductions were disallowed.

The testimony and affidavits of the Kilbanes' character witnesses present substantial evidence of their unblemished work performance, and their good character, honesty and integrity. The only event in the lives of either of the Kilbanes which has been

questioned by the Division is the claiming of disallowable, charitable deductions for the tax year 1982. Notwithstanding that Mr. Kilbane was not actually audited by the IRS, it is not unreasonable to assume that his contributions to the FCR would be disallowed. While I have characterized their conduct as "naive" there is nothing to suggest that they were deceitful or dishonest in their behavior. I, therefore, **CONCLUDE** that the Kilbanes have demonstrated by clear and convincing evidence their reputation for good character, honesty and integrity required by N.J.S.A. 5:12-89b(2).

The Kilbanes have satisfied the tax obligations resulting from the 1982 FCR deductions and both testified that they have learned a difficult lesson from this experience. Their naive conduct in one taxable year falls short of a wilful attempt to evade or defeat federal income taxes, and does not tarnish their financial stability, integrity and responsibility. Had tax liens or judgments been entered against them as a result of their 1982 tax returns, or had they developed a history of similar IRS problems, had they concealed income or attempted to disguise the nature of their charitable contributions, a different conclusion might be reached. I, therefore, **CONCLUDE** that the Kilbanes' credible explanation and open acknowledgement of their involvement in the FCR, their acceptance of and payment of the additional taxes due and owing for the tax year 1982, as well as the absence of any other negative information concerning the Kilbane's financial stability, integrity and responsibility, warrants a finding that they have demonstrated by clear and convincing evidence that they possess the financial stability, integrity and responsibility required by N.J.S.A. 5:12-89b(1). Further evidence of Ms. Kilbane's financial stability is her Personal History Disclosure Form - 1 (P-31) which reports a stable and unquestionable financial background.

Finally, it should be noted counsel for the Division in his closing argument as well as his post-hearing memorandum stated that the court can consider the "clandestine method" of the Kilbane's actions in that they did not seek the advice of an attorney or accountant before they joined the FCR, they did not attempt to involve their friends in the church, and they did not institute a law suit against the FCR or any of its members for fraud or misrepresentation. I attribute no significance to the Kilbanes' failure to institute a law suit for fraud or misrepresentation or to involve their friends in the FCR. The fact that they failed to directly consult with an attorney or accountant is simply evidence of their naivete. The Kilbanes had been advised on numerous occasions that the FCR was represented by its own attorney who apparently gave the stamp of approval to the FCR's methods and procedures for conducting its affairs. Counsel's argument that the

Kilbanes' failure to independently consult an accountant or attorney presupposes that the accountant and/or attorney would have advised them that charitable deductions to the church would be disallowed. I am unwilling to make that assumption without additional evidence being presented. The Division did not present expert testimony to support that argument.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** as follows:

1. John R. Kilbane, Jr.'s casino key employee license shall be renewed; and

2. The complaint to revoke Barbara Kilbane's casino employee license is hereby **DISMISSED**; and

3. Barbara M. Kilbane shall be granted a casino key employee license.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 23, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

October 24, 1984
DATE

Bernadette T. Fraga
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 26 1984
DATE

Ronald L. Parker /pa
OFFICE OF ADMINISTRATIVE LAW

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LIST OF WITNESSES

WITNESSES FOR BARBARA M. KILBANE AND JOHN M. KILBANE:

Barbara M. Kilbane
John R. Kilbane, Jr.
Phil Bush
James Murphy
Charles Wunder
Linda Korn
Jack R. Stuart

FOR THE DIVISION:

None

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Letter from Cornelius J. Coleman, District Director of Internal Revenue Service to the Freedom Church of Revelation, dated June 8, 1979

P-2 Cumulative List of Organizations (revised to October 31, 1981), described in section 170(c) of the Internal Revenue Code of 1954

P-3 State of New Jersey, Department of State, Certificate of Registration for the Freedom Church of Revelation, dated May 25, 1979

P-4 Form ST-5, State of New Jersey, Division of Taxation, Sales Tax, dated June 29, 1979

P-5 Copy of treasurer's check from Barbara M. Melko to Freedom Church of Revelation in the amount of $3,300, dated June 14, 1982

P-6 Copy of treasurer's check from Barbara M. Melko to Freedom Church of Revelation in the amount of $300, dated June 14, 1982

P-7 Receipt from Freedom Church of Revelation to Barbara M. Melko for donation of $3,300, dated June 14, 1982

P-8 Certificate of Ordination of Reverend Barbara M. Melko

P-9 Charter from Freedom Church of Revelation establishing Reverend Barbara M. Melko's congregation

P-10 Letter to Reverend Barbara M. Melko from Reverend Louis J. Tomaselli, dated March 1, 1980

P-11 F.C.R. certified quarterly report form

P-12 Freedom Church of Revelation/A Prayer for Today

P-13 Footprints

P-14 Freedom Church of Revelation certificate of marriage

P-15 Appointment of trustee and letter of resignation, dated July 9, 1982

P-16 Freedom Church of Revelation / Local parsonage allowance resolution, dated July 9, 1982

P-17 Resolution to establish procedures for trustees and successor trustees, dated August 6, 1982

P-18 Freedom Church of Revelation Credo, Rules of the Council and Church and Guideline and Index (69 pages)

P-19 F.C.R. certified quarterly report for congregation no. H02635T, dated October 9, 1982 with copies of checks attached (5 pages)

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P-20	1982 Federal Income Tax Return for Barbara M. Melko (3 pages)
P-21	Letter of resignation from Reverend Barbara M. Kilbane and Reverend John R. Kilbane to Presiding Archbishop, Board Members and International Treasurer, dated July 8, 1983
P-22	Letter to Barbara M. Melko from Internal Revenue Service, dated January 6, 1984, with attachments (3 pages)
P-23	Copy of cashier's check in the amount of $4,227.30 to Internal Revenue Service from Barbara M. Melko
P-24	1983 Federal Income Tax Return for John and Barbara Kilbane (8 pages)
P-25	Affidavit of Jeffrey A. Ross, dated July 18, 1984
P-26	Affidavit of Robert Goldstein, Esq., dated July 18, 1984
P-27	1982 Federal Income Tax Return of John Kilbane (4 pages)
P-28	1982 Amended U.S. Individual Income Tax Return for John Kilbane
P-29	Amended Return Acknowledgement to John Kilbane from Internal Revenue Service, dated June 25, 1984
P-30	Copy of cashier's check to Internal Revenue Service in the amount of $3,362 from John Kilbane
P-31	Personal History Disclosure Form - 1 for Barbara M. Melko (66 pages)
P-32	License renewal form for John Kilbane (4 pages)
P-33	Affidavit of John Dally, dated August 22, 1984
P-34	Letter from Internal Revenue Service to Freedom Church of Revelation, dated September 16, 1982
P-35	Floor/box evaluation form re Barbara Melko
P-36	Greate Bay Hotel and Casino employee performance review for Barbara Melko, dated January 31, 1983 (7 pages)
R-1A through F	Copies of 17 checks drawn upon checking account - Freedom Church of Revelation, congregation Number H02635T (6 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-408
OAL DOCKET NO. CCC 4325-84
LICENSE/REGISTRATION NOS.
32499-21; 31451-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
LISA KIRKLAND,		
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 21, 1984, and an addendum to the Initial Decision filed on January 8, 1985, recommending that her casino employee license and casino hotel employee registration be revoked; and the respondent having filed exceptions to the Initial Decision on December 24, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of January 16, 1985, to modify the said Initial Decision and to revoke the respondent's casino employee license and casino hotel employee registration,

IT IS on this 25th day of February 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The finding that the respondent is 25 years old is rejected. The record reveals that as of the time of the hearing in the OAL, the respondent is 23 years old.

2. The finding that the respondent was released from her employment at Bally's Park Place Casino because "she called in sick too often and had an argument with her supervisor" (Initial Decision at 3) is rejected. The record establishes that the respondent was terminated from Bally's Park Place Casino as a result of the Commission's order dated January 23, 1983, suspending her casino employee license and casino hotel employee registration.

3. The finding that the applicant's convictions for welfare fraud, in violation of N.J.S.A. 2C:20-4 renders her continued licensure and registration inimical to the Casino Control Act and casino operations is rejected as unnecessary in light of the finding that such convictions are per se disqualifiers pursuant to N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration be and hereby are revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Lisa Kirkland, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4325-84
AGENCY DKT. NO. 83-408

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
LISA KIRKLAND,
Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Lisa Kirkland, pro se

Record Closed: October 9, 1984 Decided: November 20, 1984

BEFORE **JEFF S. MASIN,** ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on December 7, 1983 seeking an order from the Commission revoking or otherwise sanctioning the casino employee license of Lisa Kirkland. Ms. Kirkland requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 23, 1984 and a Prehearing Order was issued on July 27, 1984. Thereafter, by letter of September 11, 1984, the Division amended its complaint to add certain further charges and allegations against Ms. Kirkland. A hearing was held before Administrative Law Judge Jeff S. Masin at the Ventnor Municipal Court on October 9, 1984.

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THE ISSUES

As set forth in the Prehearing Order, the Division seeks revocation because it believes that Ms. Kirkland's conviction for welfare fraud disqualifies her for licensure in that she does not meet the qualification standards and is therefore barred from licensure under N.J.S.A. 5:12-86(a). Further, the Division contends that a conviction for welfare fraud constitutes a statutory disqualifying offense, pursuant to N.J.S.A. 5:12-86(c)3, thus requiring revocation of Ms. Kirkland's license. In addition, the Division argues that continued licensure of Ms. Kirkland would be inimical to the interests of the Casino Control Act and the industry. Ms. Kirkland contends that despite her prior arrests and convictions she has rehabilitated herself from the adverse affects of these matters and therefore should be permitted to continue to be licensed, pursuant to N.J.S.A. 5:12-90(h). Finally, the Division questions whether Ms. Kirkland has the requisite good character, honesty and integrity required for licensure.

THE EVIDENCE

The Division's evidence consisted of documents. The most significant of Ms. Kirkland's legal entanglements was her conviction for welfare fraud, a violation of N.J.S.A. 2C:20-4. She had been indicted by the Camden County Grand Jury on two indictments and entered pleas of guilty to the theft by deception-welfare fraud counts of each indictment. Specifically, she admitted by her plea that she had received welfare by deception while being employed during the period from September 1, 1979 through December 1979 and August 1980 through March 1981. The total amount received in those periods of time was $1,542. In addition, Ms. Kirkland pled to a second indictment which charged that she received $2,470 in welfare benefits by deception by failing to report her employment at Bally's Park Place Casino from July 1982 through June 1983. During that time Ms. Kirkland was employed as a blackjack dealer. As a result of her pleas of guilty to the two indictments, Ms. Kirkland was sentenced to concurrent one year probation terms and ordered to participate in at least 100 hours of community service as designated by the probation office. She was also required to pay a total of $50 in payments to the Violent Crimes Compensation Board.

Ms. Kirkland testified in connection with the welfare convictions that she has completed her community service, which consisted mainly of raking leaves in the

neighborhood and cleaning the firehall. She is still on probation. She testified that she was aware that she should have reported her employment, but did not do so because she had debts.

Ms. Kirkland was arrested on a charge of aggravated assault on a law enforcement officer, N.J.S.A. 2C:12-1B.5a, by the Camden County Police on October 21, 1980. According to police reports placed in evidence and prepared by Patrolman Edward S. Smith of the Camden County Police Department, Ms. Kirkland was observed speeding in Gloucester Township. When the officer finally managed to stop her, she made obscene remarks to the officer and sped away. A chase ensued and after traveling some distance, Ms. Kirkland stopped her vehicle and exited her car. She was caught by Officer Smith, but she kicked him in the groin and the left knee. She was placed under arrest at that time. She was subsequently convicted on a down-graded charge of simple assult, N.J.S.A. 2C:12-1A(1), and was sentenced to 4 days in jail, a $300 fine, $200 of which was suspended, and $25 court costs.

Ms. Kirkland testified that she was speeding because she was late for class at Camden County College. Her boyfriend was beating her up. He jumped from the vehicle when the police were in pursuit (his exit is confirmed by the police reports). Kirkland described herself as being in a bad mood at the time.

Kirkland's final run-in with the law occurred in January of 1984. On January 27th she went to an auto agency parking lot and removed her vehicle from the lot, despite the fact that it had been repossessed by a bank. According to the police reports from the Maple Shade Township Police Department, she had been informed that the vehicle was repossessed prior to the time that she removed it. She was charged with theft of movable property, pursuant to N.J.S.A. 2C:20-3. The charge was eventually dismissed after she returned the vehicle.

Ms. Kirkland testified that she was only 20 days late with her car payment. She eventually declared bankruptcy. She still has the vehicle.

Lisa Kirkland testified that she is 25 years old and a resident of Atco, Camden County. She is not employed as of this time, having last been employed at Bally's Park Place Casino on January 26, 1983 as a blackjack dealer. She was released because she called in sick too often and had an argument with her supervisor. She is the mother of

two children, six and seven years of age, who live with her. She does not receive welfare. She noted that she had never attempted to take anything from Bally's.

DISCUSSION

The evidence presented in this case demonstrates that Lisa Kirkland has engaged in a number of incidents of illegal conduct. Her conviction for welfare fraud is most significant, particularly because she defrauded the Camden County Welfare Board while working as a casino employee. Conduct of this nature, engaged in by one holding a position of great trust in the casino industry, reflects very strongly against the respondent.

Ms. Kirkland's other involvements seem to arise from perhaps a lack of maturity, as well as a considerable temper. Her actions in connection with the speeding incident appear totally unjustified, even if her boyfriend was indeed beating her up. If anything, under the circumstances, she should have been very happy to see a police officer. Instead, she attacked the officer in a particularly brutal fashion.

Having considered the evidence, including Ms. Kirkland's apparently successful probationary period up to this point, I am thoroughly convinced that the Division has carried its burden of establishing a basis for revocation of this license. I **FIND** that Ms. Kirkland has been convicted of a statutory disqualifying offense, to wit: theft by deception-welfare fraud, N.J.S.A. 2C:20-4. I further **FIND** that she has engaged in conduct which raises grave concerns about her good character, honesty and integrity and clearly prevents her from demonstrating the requisite good character, honesty and integrity by clear and convincing evidence, as she is required to do at all times. Finally, I **FIND** that the respondent has failed to establish that she has rehabilitated herself from the adverse affects of her convictions. This is so because of the nature of the conviction for welfare fraud, particularly its aspect of fraud while enjoying the privileges of the license and benefiting therefrom, as well as the fact that she continues on probation. While ultimately this incident may become so remote that it would not affect Ms. Kirkland's relicensure, certainly at the present time allowing her to continue as a casino licensee would be quite adverse to the spirit of the Casino Control Act, and therefore inimical. N.J.S.A. 5:12-86d.

I **CONCLUDE** that the Division of Gaming Enforcement has established by a preponderance of the evidence sufficient legal grounds for the revocation of Ms. Kirkland's casino employee license. Specifically, I **CONCLUDE** that the Division has established that she has been convicted of a statutory disqualifying offense and that her continued licensure would be inimical to the interests of the Casino Control Act and the industry. Further, I **CONCLUDE** that the respondent does not have the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-90b as incorporating Section 89b. Additionally, I **CONCLUDE** that the respondent has not demonstrated her rehabilitation from the adverse affects of the above detrimental factors so as to permit her continued licensure. Therefore, I **CONCLUDE** that her license must be revoked.

It is **ORDERED** that the casino employee license of Lisa Kirkland be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

11/20/84
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

November 21, 1984
DATE

Bernadette T. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 28 1984
DATE

Ronald I. Parker/phb
OFFICE OF ADMINISTRATIVE LAW

452
ks

EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment I1908-8-83 and Indictment I927-02-84, with accompanying Judgments of Conviction and Statement of Reasons for Sentencing

P-2 Report of Criminal Investigation prepared in connection with welfare fraud investigation

P-3 Investigation Report, Re: October 21, 1980 Incident in Gloucester Township

P-4 Maple Shade Township Uniform Investigation Report and Supplementary Investigation Reports, with attached complaints with respect to incident of January 27, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 46550-21
AGENCY DOCKET NO. 84-EA-25
OAL DOCKET NO. CCC 2899-84

IN THE MATTER OF THE APPLICATION
OF TEDDY J. KRAY
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 27, 1984, recommending that the application of Teddy J. Kray for a casino employee license be granted; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 9, 1985, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 14th day of JANUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Teddy J. Kray for a casino employee license be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Teddy J. Kray and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2899-84

AGENCY DKT. NO. 84-EA-25

TEDDY J. KRAY,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Teddy J. Kray, petitioner, pro se

Patricia Wild, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 11, 1984 Decided: November 26, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Teddy J. Kray to the Casino Control Commission for licensure as a casino employee, permitting him to act as a junket representative, sole owner/operator. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of Sections 89(b)(2) and 90(b) of the Casino Control Act as incorporated in Section 102 of the Act.

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2. Whether the petitioner, with specific reference to his 1980 convictions in Chicago, Illinois, for conspiracy, contrary to 18 USC 371 and for possession of stolen freight from a foreign shipment, contrary to 18 USC 659 (New Jersey equivalents: N.J.S.A. 2C:5-2 and N.J.S.A. 2C:20-7), has been convicted of an offense which is an enumerated statutory disqualifier from licensure, within the meaning of Section 86c of the Casino Control Act.

3. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to Section 86c of the Act, has demonstrated his rehabilitation, within the meaning of Section 90h of the Act.

PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated January 20, 1984, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on April 24, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14 F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 54 year old resident of Skokie, Illinois, and he has been married to Sondra Kray for 30 years. For a number of years, the petitioner was a licensed junketeer who ran gaming junkets to casinos in Las Vegas, Nevada. For a time, he also assisted in making arrangements for junkets to casinos in Atlantic City, New Jersey.

On his personal history disclosure form, (Exhibit R-1), the petitioner disclosed that on December 4, 1980, he was convicted upon his plea of guilty to the charges of conspiracy to commit an offense against the United States, contrary to 18 USC 371 and possession of stolen freight from a foreign shipment, contrary to 18 USC 659. Testifying at the hearing, the petitioner explained that his involvement in the criminal matter began when a friend called him and asked if the petitioner would permit the friend to use the petitioner's garage to store merchandise for which the friend did not have sufficient space. The petitioner agreed to allow his garage to be used to store the merchandise, but

he realized after the merchandise was stored in his garage that it had been stolen. However, he did nothing but continue to permit the arrangement. The petitioner explained candidly at the hearing that he participated because he was to be paid for his services. It is undisputed that the petitioner was not, in fact, ever paid for his participation.

The petitioner was arrested and charged after undercover agents posed as buyers who were negotiating for the purchase of the stolen merchandise, which consisted of 150 television cameras stolen from a shipment of freight from Tokyo, Japan (Exhibit J-1). It is undisputed that the petitioner cooperated fully with the government investigators and his culpability was viewed by the government as secondary. The secondary nature of his involvement was taken into consideration by the United Sates District Judge who sentenced the petitioner on December 4, 1980, to two concurrent terms of probation of two years each on the two counts of the indictment against the petitioner. The petitioner was also fined $1,000 (Exhibit R-2). Of the co-conspirators, the petitioner received the lightest sentence.

It was the candid and sincere testimony of the petitioner that he fully understands that his criminal involvement was a mistake and that he believes himself to have been rehabilitated. In April, 1981, the petitioner suffered a stroke, which he attributes to his anxiety concerning his criminal involvement. The stroke caused the petitioner to lose most of his control of his right arm. Since that time, the petitioner completed a work rehabilitation program offered by the State of Illinois and has undergone physical therapy. However, diligent efforts to obtain employment have been unsuccessful.

The petitioner believes that he has paid the penalty for his criminal involvement in many ways. He successfully completed his probation on December 3, 1982, and because of his inability to find employment, the fine which he was to pay was rescinded.

The petitioner has no other criminal record. Admitted into evidence on behalf of the petitioner were letters from Louis Black, Clerk of Niles Township, Illinois, and Cantor Allen S. Stearns, of Congregation B'nai Emunah, Skokie, Illinois (Exhibits P-1 and

P-2). These letters indicate that the petitioner is a trustworthy, honorable man of good character who is well respected within his community. According to the petitioner, both correspondents were aware of his criminal conviction at the time they wrote the letters.

Also testifying on behalf of the petitioner was his wife, Sondra Kray, who stated that the petitioner promptly reported his conviction to the junketeer licensing authorities in the State of Nevada. As a result of his conviction, his junketeer registration in Nevada was revoked. However, both the petitioner and his wife testified credibly that the petitioner would be eligible for reinstatement if he were to be employed as a junket representative by a Nevada casino hotel.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to Sections 89b(2), 90b and 102 of the Casino Control Act,(N.J.S.A. 5:12-1 et seq.),an applicant for a casino employee license which would permit him to act as a junket representative, must demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c, the Casino Control Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of certain enumerated statutes.

It is undisputed tuat the petitioner was convicted upon his plea of guilty on December 4, 1980, of the offenses of conspiracy, contrary to 18 USC 371 and possession of stolen freight from a foreign shipment, contrary to 18 USC 659. It is undisputed that these convictions are for offenses occurring in the State of Illinois which would be under New Jersey law, at the time of application, violations of N.J.S.A. 2C:5-2, conspiracy, and N.J.S.A. 2C:20-7, receiving stolen property. Both of these offenses are specifically enumerated disqualifying offenses under Section 86c(1).

Pursuant to Section 90h of the Casino Control Act, the petitioner shall not be denied a casino employee license on the basis of his conviction of disqualifying offenses, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

1. The nature and duties of the position applied for;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense;

8. Any evidence of rehabilitation, including good conduct in prison, or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correction work release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The petitioner has no record of criminal involvement aside from his convictions in 1980 for conspiracy and possession of stolen freight from a foreign shipment. The prosecution and the sentencing judge viewed the petitioner's culpability in the criminal incident as secondary. The peitioner is well aware that his conduct was a mistake, and it is fair to infer from the credible evidence in the record that the conduct was aberrational and not likely to be repeated.

Not long after his conviction, the appellant suffered a stroke which left him partially paralysed. Following physical therapy and attendance at a work rehabilitation

program, the appellant diligently sought employment, but was unsuccessful. He feels that he is physically capable and otherwise qualified to be a junket representative, and that, having paid his debt to society, he should be licensed.

I agree with the petitioner. Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Petitioner has been convicted of offenses which are enumerated statutory disqualifiers from licensure, within the meaning of Section 86c(1) of the Casino Control Act. However, I further **CONCLUDE** that the petitioner has overcome his disqualification from licensure on the basis of his conviction of offenses enumerated under Section 86c(1) of the Act, by demonstrating his rehabilitation, within the meaning of Section 90h of the Casino Control Act, by clear and convincing evidence.

I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Casino Control Act, as incorporated in Section 102 of the Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED,** that the application of Teddy J. Kray for a casino employee license, permitting him to act as a junket representative, sole owner/operator, be granted.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 26, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 27, 1984
DATE

Bernadette T. Fraga
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 29 1984
DATE

Ronald L. Parker/pko
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

Joint Exhibit:

J-1 Letter from U.S. Probation Officer Mentus, dated October 18, 1982

For the Petitioner

P-1 Letter, dated October 3, 1984

P-2 Letter, dated October 1, 1984

For the Respondent:

R-1 Personal History Disclosure Form

R-2 Judgment and Probation Order Dated December 4, 1980

WITNESSES

For the Petitioner:

Teddy J. Kray
Sondra Kray

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-164
OAL DOCKET NO. CCC 8817-84
REGISTRATION NO. 14997-40

STATE OF NEW JERSEY, DEPT. OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant	
v.	FINAL ORDER
MARSHALL D. LEWIS	
Respondent.	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 1, 1985,

IT IS on this 13th day of May 1985, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the casino hotel employee registration of Marshall D. Lewis is revoked substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Marshall D. Lewis is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8817-84
AGENCY DKT. NO. 84-164

DIVISION OF
GAMING ENFORCEMENT,
DEPARTMENT OF LAW
& PUBLIC SAFETY,
Petitioner,
v.
MARSHALL D. LEWIS,
Respondent.

William E. Mountford, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Marshall D. Lewis, respondent, pro se

Record Closed: February 25, 1985 Decided: March 28, 1985

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint that the Division of Gaming Enforcement (Division) filed with the Casino Control Commission (Commission) on May 24, 1984, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Lewis requested a hearing and the matter was referred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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The prehearing conference was held on January 29, 1985, and the parties agreed that the issues are:

(a) Whether the conduct underlying the respondent's conviction on or about May 15, 1984, rendered his continued registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

(b) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

Based on the testimony and exhibits received at the hearing on February 25, 1984, I **FIND** that the pertinent facts in this matter are not in dispute.

Mr. Lewis was employed as a cook by Tropicana Hotel and Casino (Tropicana) at the time of the incidents involved in this matter. On April 26, 1984, Mr. Lewis took four boxes of frozen shrimp from the freezer in the kitchen and hid the boxes in the ceiling of the elevator outside of the kitchen. On April 28, 1984, Mr. Lewis removed three more boxes of shrimp and hid them in the same place. Paul E. Pettigrew, an employee of Tropicana, removed two of the boxes hidden in the ceiling, placed them in his locker and thereafter was apprehended when he tried to take the two boxes out of the casino on April 28, 1984. Mr. Pettigrew told the police that he had paid Mr. Lewis $10 for the two boxes of shrimp and that Mr. Lewis had sold him shrimp in the past. After he was arrested, Mr. Lewis admitted that Mr. Pettigrew had paid him $10 and that Mr. Pettigrew had paid him in the past for shrimp. Mr. Lewis stated that he had never personally removed any shrimp from the casino premises.

The police found the remainder of the shrimp where Mr. Lewis had hidden them; however, the shrimp had to be thrown away since they had already thawed. The police charged Mr. Lewis with theft by unlawful taking, a violation of N.J.S.A. 2C:20-3, and conspiracy, a violation of N.J.S.A. 2C:5-3 (P-1, P-2). The matter was referred to the Atlantic County Prosecutor's office where the charge was amended to stealing property with a value under $200 and the conspiracy charge was dismissed (P-3). The matter was then remanded to the Atlantic City Municipal Court and on July 19, 1984, Mr. Lewis pled guilty to the offense and was fined $300 plus $25 in court costs, placed on probation for one year and required to make restitution in the amount of $264.25 (P-4).

After he was fired by Tropicana, Mr. Lewis was out of work for approximately one month and then he got a job as a cook at Resorts International Casino and Hotel (Resorts). Mr. Lewis told Resorts about the incidents at Tropicana before he was hired;

however, he lost his job there when his registration was suspended by the Commission. Mr. Lewis is currently employed as a cook by Dear's Place Restaurant and he also works as a security guard at a nursing home. According to Mr. Lewis, Tropicana is willing to rehire him if his registration is restored.

At the time of the hearing in this matter, Mr. Lewis was 22 years old, was still on probation, and was making regular payments of the amount of the restitution as ordered by the court. Mr. Lewis has no prior criminal record. As to the Tropicana incidents, Mr. Lewis could not explain his action, considered his action to be a stupid mistake, and implied that Mr. Pettigrew had talked him into doing it. The respondent expressed a genuine remorse as to what had occurred and stated that he had lost a substantial amount of money because of the Tropicana incidents. Mr. Lewis represented that he had learned by his mistake and that it will never occur in the future.

On cross-examination, Mr. Lewis admitted that he appeared before the Commission at its June 13, 1984 hearing and swore that he did not steal the shrimp (P-5). As a result of his statement, the Commission did not suspend his registration and asked the Division to supply further information. Upon the receipt of this information, Mr. Lewis' registration was suspended. Thereafter, Mr. Lewis pled guilty at the municipal court hearing.

Mr. Lewis explained his statements to the Commission by saying that he was scared when he appeared before the Commission and that he did not think he stole the shrimp since he had not personally tried to take them out of the casino.

Several letters of endorsement were admitted into evidence on behalf of Mr. Lewis (R-1, R-2, R-3). By letter dated January 30, 1985, Joel L. Rosenzweig, manager of Dear's Place Restaurant, stated that Mr. Lewis has been an exemplary employee since he was hired in June 1984, that he was aware of the Tropicana incidents and that he considered Mr. Lewis to be a good employee (R-1). By letter dated February 25, 1985, Joseph Simmons, production chef, Tropicana, stated that he has worked with Mr. Lewis for over four years and has found the respondent to be a very conscientious and hard worker (R-2). By letter dated February 13, 1985, Arthur Horta, executive chef, Claridge Hotel and Casino, stated that Mr. Lewis has worked under his supervision and that he considers the respondent to be a person of excellent character and a dependable employee (R-3).

In closing, Deputy Attorney General William E. Mountford stated that any criminal action by a registrant or licensee committed during the course of employment at a casino is an inimical offense which warrants revocation unless the person proves rehabilitation. In this matter, Mr. Mountford argued that Mr. Lewis stole the shrimp even though he did not personally take the stolen property from the premises. Mr. Mountford noted that the theft was not a single incident but that Mr. Lewis had taken shrimp on several occasions and that he had lied when he appeared before the Commission. Although Mr. Lewis appeared to sincerely regret his action, Mr. Mountford argued that less than a year has elapsed since the incidents and that this was an insufficient period of time for the respondent to make a persuasive showing of rehabilitation.

In closing, Mr. Lewis admitted that he took the shrimp and that he is now paying for his mistake. Mr. Lewis felt that if the casino is willing to give him another chance that the Commission should reinstate his registration.

Based on the facts presented, I **CONCLUDE** that the Division has shown that Mr. Lewis was convicted of a crime which is not a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), but since it occurred on the premises of a casino, the crime does render the respondent's continued registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

The Casino Control Act provides that a person can overcome a statutory disqualifier against registration by affirmatively demonstrating his/her rehabilitation, and N.J.S.A. 5:12-91d sets forth eight specific criteria to be considered to determine whether or not a person has been rehabilitated:

(1) The nature and duties of the registrant's position.
(2) The nature and seriousness of the offenses.
(3) The circumstances under which the offense occurred.
(4) The date of the offense.
(5) The age of the registrant when the offense was committed.
(6) Whether the offense was an isolated or repeated incident.
(7) Any social conditions which may have contributed to the offense.
(8) Any evidence of rehabilitation including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional participation and correctional work release programs, or the recommendation of persons who have or have had the registrant under their supervision.

Based on the facts, I **CONCLUDE** that Mr. Lewis has not affirmatively demonstrated his rehabilitation pursuant to this statute. Although the respondent has only one conviction, it is based not on a single incident but on the fact that he had on several occasions taken property from the casino's kitchen. In addition, Mr. Lewis attempted to avoid prosecution by alleging that he had not committed a crime since he had not tried to take the shrimp from the casino's premises. Although I believe that Mr. Lewis sincerely regrets his actions, and that he has taken affirmative steps towards rehabilitation, I agree with Mr. Mountford's argument that an insufficient period of time has passed for him to meet the standards set forth in N.J.S.A. 5:12-81d for proving rehabilitation.

Therefore, I **CONCLUDE** that Mr. Lewis has not shown by clear and convincing evidence his rehabilitation and I **ORDER** that the casino hotel registration of Marshall D. Lewis be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 28, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

March 29, 1985
DATE

Bernadette T. Fuoco
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 0 2 1985
DATE

Ronald L. Parker/pkc
OFFICE OF ADMINISTRATIVE LAW

ij/ee

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE

FOR THE PETITIONER:

P-1 Memorandum from Anthony Degliomini to Richard Ferry, dated April 28, 1984

P-2 Investigation Report of the New Jersey State Police, dated April 28, 1984 and Arrest Report of the New Jersey State Police, dated April 28, 1984

P-3 Atlantic County Office of the Prosecutor Memorandum as to the status of the complaint against Marshall D. Lewis

P-4 Complaint against Marshall D. Lewis filed with the Atlantic City Municipal Court and the disposition on the matter

P-5 Part of the Minutes of the June 13, 1984 meeting of the New Jersey Casino Control Commission.

FOR THE RESPONDENT:

R-1 Letter from Joel L. Rosenzweig, dated January 30, 1985

R-2 Letter from Joseph Simmons, dated February 25, 1985

R-3 Letter from Arthur Horta, dated February 13, 1985

WITNESSES

FOR THE RESPONDENT:

Marshall D. Lewis

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-63
OAL DOCKET NO. CCC 8264-84
APPLICATION NO. 50105-21

APPLICATION OF EDWARD J. MADDEN :
FOR A CASINO EMPLOYEE LICENSE :

AMENDED FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 1, 1985,

IT IS on this 21st day of May 1985, ORDERED that the initial decision is affirmed;

IT IS FURTHER ORDERED that the application of Edward J. Madden is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this amended final order be served upon Edward J. Madden, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8264-84
(CCC 2900-84 ON REMAND)
AGENCY DKT. NO. 84-EA-63

EDWARD J. MADDEN,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Respondent.

Edward J. Madden, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Anthony D'Elia, Deputy Attorney General, at the prehearing conference)

Record Closed: January 29, 1985 Decided: March 15, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Edward J. Madden, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (craps dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose information material to licensure and lacked the requisite

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good character, honesty and integrity. More specifically, in issue were the reasons for the applicant's failure to disclose his criminal record history in the application process.

PROCEDURAL HISTORY

Mr. Madden filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on November 10, 1983 (R-1). By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated March 20, 1984, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter, Mr. Madden requested a hearing. On April 16, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 1, 1984, and the matter was scheduled for hearing.

On September 25, 1984, an initial decision was issued in which it was determined that the applicant had abandoned his request for a hearing by reason of his failure to appear at a scheduled hearing. However, by order dated November 7, 1984, the Commission remanded the matter to the Office of Administrative Law. The matter was retransmitted on November 13, 1984.

A second prehearing conference was held on December 19, 1984. The matter was heard and the record was closed on January 29, 1985.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Madden is 23 years of age and currently resides in Brigantine (R-1). He is a June 1979 graduate of Lansdale Catholic High School, Lansdale, Pennsylvania. He is also a May 1981 graduate of Montgomery County Community College, Pennsylvania, where he earned an associate's degree in hotel and restaurant management.

From November 1978 to June 1981, the applicant was employed by Century House Restaurant, Hatfield, Pennsylvania, as a busboy and waiter.

From June 1981 to August 1981, the applicant was employed by Easy Street Pub in Atlantic City as a food server.

On August 19, 1981, the Commission issued the applicant a casino hotel employee license, number 30467-40, which registration is still current.

From August 1981 until October 10, 1984, tbe applicant was employed by Harrah's Marina Hotel Casino (Harrah's) as a waiter. This employment was satisfactory in all respects (P-1).

On April 21, 1982, the applicant was involved in an incident at Bally's Park Place Casino Hotel (Park Place). The applicant was with Allen Ronchetti, a friend who was also employed by Harrah's as a waiter and was formerly employed by Park Place. They used food coupons to which they were not entitled, with a value of $10, to pay for their meals. The applicant knew that his use of the food coupons was unlawful; however, the circumstances underlying the incident were in dispute and will be discussed, infra. In any event, the applicant was charged with a violation of N.J.S.A. 2C:20-8a, theft of services, taking meal coupons with a value of $10 (R-2). On May 10, 1982, the applicant appeared in the Atlantic City Municipal Court, and pled guilty to the charge and was fined $25 plus $25 costs.

On November 10, 1983, the applicant filed his PHDF-2A with the Commission. The applicant alone completed the application. In response to question number 16 on the PHDF-2A, the applicant did not disclose the incident of April 21, 1982 nor the proceedings which emanated therefrom. The reasons for the nondisclosure were in dispute and will be discussed, infra.

From October 1984 to January 1985 the applicant was again employed by the Century House Restaurant as a service bartender and waiter.

Since January 9, 1985, the applicant has been employed by Resorts International Hotel, Inc., as a waiter on the graveyard shift.

In January 1985, the applicant successfully completed a craps dealer's course at Casino Schools Incorporated.

At the commencement of the hearing, the parties agreed to the following stipulation:

> If then Agent Harvey Burns, who is no longer employed by the Division, were called to testify in this proceeding, his testimony would be that during a telephonic interview of the applicant and after the applicant was confronted with the facts of the incident, the applicant acknowledged his involvement in the incident of April 21, 1982. Further, the applicant stated to the agent that the applicant had not disclosed the incident on his PHDF-2A because he believed only that he had been detained by Park Place security and not by agents of the Division and, therefore, that he had not been arrested.
>
> The applicant has not been involved in any other criminal misconduct.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident of April 21, 1982, the reasons for the applicant's nondisclosure of the incident on his PHDF-2A, and the applicant's good character, honesty and integrity.

Mr. Madden testified that during dinner at the Park Place's Greenery Restaurant he consumed a substantial amount of alcoholic beverages and became intoxicated. With the applicant's knowledge, Mr. Ronchetti paid the check with the stolen coupons. The applicant and Mr. Ronchetti then left Park Place and began to walk on Missouri Avenue. They were detained by Park Place security, who were recognized by an arm patch on their clothing. Uniformed Atlantic City Police Department officers arrived and escorted the applicant and Mr. Ronchetti back to Park Place, where they were turned over to several men dressed in business clothes. The applicant testified that because he had been initially detained by Park Place security, he assumed that the men to whom he was turned over were Park Place security supervisors. The applicant and Mr. Ronchetti were placed in handcuffs and detained for two to three hours. The applicant was strip searched and had his picture taken, although his fingerprints were not taken. While Mr. Ronchetti was being questioned, the applicant fell asleep. Ultimately, both were released and went home. The applicant received the summons with the statement of charges from the Atlantic City Municipal Court by ordinary mail (R-2). The applicant believed that he

had been charged with a minor offense. He went to court, pled guilty and paid his fine. The entire court proceedings took approximately ten minutes. Mr. Ronchetti pled not guilty, was found guilty and received a fine substantially in excess of that given the applicant.

Mr. Madden testified that at no time prior to his telephone interview with a Division agent did he believe that he had been arrested, nor did he understand the severity of the offense. He recognized that he had made a mistake and been penalized. He acknowledged that it was his obligation to make sure that no such mistake occurred again in the future.

The Division did not offer the testimony of the persons who detained the applicant on April 21, 1982, any arrest report or any indication that the applicant's fingerprints were taken. In fact, there was no evidence that the applicant had been arrested.

In order to evaluate the applicant's testimony, it is essential to determine his credibility. Initially, his position in this matter must be recognized. As the applicant, he seeks to gain licensure and, as such, he has a direct interest in the outcome and a bias in these proceedings. However, it appeared both during the hearing and during my review of the record and from my observations of the applicant's demeanor, the plausibility of his testimony, the absence of contradictory evidence and my examination of the documentary evidence, that the applicant testified truthfully in every regard. Further, the applicant admitted candidly his misconduct and discussed openly the circumstances surrounding his detention and the court proceedings without a full comprehension of the significance of the various facts as applied to the law. Accordingly, I am persuaded to accept his testimony in all respects.

It is abundantly evident that the applicant believed reasonably that he had been detained only by Park Place security personnel. This belief is supported directly by the absence of any evidence of an arrest. Further, the applicant's belief that his appearance in municipal court concerned only a minor offense which did not require disclosure was supported by his belief that he had not been arrested, the nature of the incident and the fact that his testimony was consistent with the statement he made to the investigator at the time of the telephonic interview.

The applicant also testified that he now understands the significance of his misconduct and that it will not be repeated. Further, he desires to have a career within the casino industry.

The applicant also produced a letter of recommendation from Mary Lou Ruffu, Marina Garden Manager for Harrah's (P-1). Ms. Ruffu stated that the applicant possessed a positive attitude, was conscientious and dealt well with customers.

After consideration of the entire record in this matter, I further **FIND** that:

1. As a result of his consumption of alcoholic beverages during dinner at Park Place, the applicant was intoxicated.

2. The applicant and Mr. Ronchetti were detained by Park Place security personnel outside of the licensed facility.

3. Uniformed Atlantic City Police Department officers escorted the applicant and Mr. Ronchetti back to Park Place, where they were turned over to several men dressed in business attire.

4. The applicant believed that the Atlantic City Police Department officers had turned him and Mr. Ronchetti over to Park Place security supervisors.

5. This belief was reasonable, and the applicant had no reason to believe to the contrary.

6. Following their detention, the applicant and Mr. Ronchetti were permitted to leave Park Place.

7. The applicant received the summons from the Atlantic City Municipal Court by ordinary mail.

8. The applicant pled guilty to the charges, which proceedings lasted approximately ten minutes.

9. The applicant believed that he had been involved in a minor offense, which, considering the absence of an arrest, was not required to be disclosed on his PHDF-2A.

10. The applicant desires a career within the casino industry.

11. The applicant has a positive employment record in the casino industry.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86b

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

> So that fully informed decision may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the [L]egislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License 78-EA-8 (Jan. 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

There is no question that the applicant should have disclosed the proceedings emanating from the incident of April 21, 1982, at Park Place. However, the applicant believed reasonably that he was not arrested and, accordingly, believed that the charges were not of the type which he was required to disclose. Also, there is no evidence that he was, in fact, arrested. Accordingly, it is clear that the applicant's failure to disclose was reasonably the result of ignorance, and is, therefore, excusable.

I **CONCLUDE** that the applicant's failure to disclose the incident of April 21, 1982, and the charges emanating therefrom, on his PHDF-2A was the result of ignorance, and does not constitute a violation of N.J.S.A. 5:12-86b.

(B) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Madden was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

In the absence of any disqualifying factors, in view of the applicant's positive employment record in the casino industry and otherwise, and in consideration of the applicant's acknowledgement of his misconduct and the manner in which he has otherwise conducted himself, an examination of the "whole man" clearly and convincingly establishes that Mr. Madden is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation, Casino Control Commission, supra, at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Edward J. Madden for licensure as a casino employee be **GRANTED.**

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 15, 1985
DATE

Richard L. Voliva
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

March 15, 1985
DATE

Bernadette Fricano
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 2 0 1985
DATE

Ronald L. Tarkes/pco
OFFICE OF ADMINISTRATIVE LAW

ml/E

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Letter from Mary Lou Ruffu, January 24, 1985

R-1 Personal History Disclosure Form - 2A, Edward Joseph Madden, filed on November 10, 1983 (25 24 pages)

R-2 The State of New Jersey v. Edward Joseph Madden, Atlantic City Municipal Court, Docket No. C03540, April 21, 1982

WITNESS LIST

FOR THE APPLICANT:

Edward J. Madden

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-84
OAL DOCKET NO. CCC 2570-84
REGISTRATION NO. 48505-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	FINAL ORDER
v.	
PEDRO MALAVE	
Respondent	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law (OAL) on July 26, 1984, recommending that the complaint filed by the Division of Gaming Enforcement be dismissed; and no exceptions or objections having been filed by either party; and the Commission, after considering the entire record in this matter, having resolved at its public meeting of September 5, 1984, for good cause shown, to affirm the findings of fact, but reject certain conclusions of law contained in the initial decision, and to find the respondent disqualified from holding a casino hotel employee registration; and the Commission having further resolved to waive said disqualification in the interests of justice pursuant to N.J.S.A. 5:12-91(e) and to dismiss the complaint against the respondent,

IT IS on this 1st day of March 1985, ORDERED that the Initial Decision be and hereby is modified as follows:

1. The Administrative Law Judge found that, while the Division demonstrated that the respondent had been convicted on June 18, 1982, of two counts of receiving stolen property (third degee) in violation of N.J.S.A. 2C:20-7, a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1), the respondent had nevertheless proved his rehabilitation pursuant to N.J.S.A. 5:12-91(d).

   Upon independent review of the record the Commission finds insufficient evidence to support a finding of rehabilitation.

IT IS FURTHER ORDERED that, in recognition of the respondent's substantial efforts toward rehabilitation to date, the disqualification of the respondent be and hereby is waived in the interests of justice pursuant to N.J.S.A. 5:12-91(e), and the respondent is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that the Initial Decision filed by the OAL be and hereby is affirmed and adopted as modified above and is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the respondent and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

RECEIVED
JUL 30 1984
CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION
OAL DKT. NO. CCC 2570-84
AGENCY DKT. NO. 84-84

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
PEDRO MALAVE,
Respondent.

APPEARANCES:

Anthony D'Elia, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Pedro Malave, pro se

Record Closed: June 29, 1984 Decided: July 23, 1984

BEFORE **JEFF S. MASIN:**

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on March 21, 1984 seeking an order revoking the casino hotel employee registration of Pedro Malave. The basis for the proposed revocation was that Mr. Malave had, on June 11, 1982, been sentenced to a two year probationary term, conditioned upon a payment of a $1,000 fine and a $50.00 violent crime compensation board penalty upon his plea of guilty to two counts of theft by receiving stolen property, a crime of the third degree. The property involved were automobiles, specifically a 1975 Monte Carlo and a 1977 Monte Carlo.

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The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 25, 1984 and a Prehearing Order was issued on June 11, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Trenton on June 29, 1984.

Evidence presented on behalf of the Division of Gaming Enforcement included a copy of indictment 1439-81 issued by the Camden County Grand Jury.

The Judgment of Conviction, which was also placed in evidence, indicates that Mr. Malave retracted his plea of not guilty and entered a plea of guilty on April 19, 1982 and was sentenced on June 11, 1982. The sentences on the two counts of the indictment were to run concurrently.

Police reports from the New Jersey State Police were introduced in evidence. These establish the circumstances under which Mr. Malave's participation in the possession of the two stolen automobiles was uncovered. Mr. Malave testified at the hearing that he had indeed known that the automobiles were stolen. He personally removed the VIN number from the vehicles. He claimed that he had purchased the 1975 Monte Carlo from a junkyard and the other vehicle had been purchased from a man in the street.

DISCUSSION

The facts in this case are quite simple. Mr. Malave, who has had no other involvement with the law, engaged in such activity in 1981. His involvement in the crime was limited to that of possessing the stolen automobiles and there is no indication that he was in fact the thief or that he attempted any acts which had the potential for causing bodily harm.

Given the circumstances of this case, and the nature of Mr. Malave's employment as a kitchen worker, and in view of the positive recommendation from his supervisor, I can find no basis for determining that his registration should be revoked. While possession of stolen property is a specifically enumerated disqualifying offense

under N.J.S.A. 5:12-86(c), the rehabilitation portion of the statute, N.J.A.C. 5:12-91(h), would certainly appear to apply in this case. While the passage of time since the incident is no more than about two and half years and the probationary period has only ended within the last few months, I believe that for the crime involved, the circumstances, and the position held by Mr. Malave, the two plus years is a sufficient period to permit a determination that Malave should continued to be registered.

For the reasons set forth above, the application for revocation is DENIED.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

July 23 1984
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 24, 1984
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

JUL 26 1984
DATE

Ronald L. Parker /pkw
OFFICE OF ADMINISTRATIVE LAW

ij

490

EVIDENCE LIST

On Behalf of Petitioner:

P-1 Indictment 1439-81 and Judgment of Conviction

P-2 Investigation Report of Detective Humphries, New Jersey State Police

P-3 Investigation Report of Amos J. Baker, New Jersey State Police

On Behalf of Respondent:

R-1 Letter of June 28, 1984 from Eddie Contreras, Assistant, Executive Chief Steward

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 1093-79
AGENCY DOCKET NO. 83-CSI-10
OAL DOCKET NO. CCC 6452-83

APPLICATION OF MASTER PURVEYORS, INC., FOR LICENSURE AS A CASINO SERVICE INDUSTRY

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 28, 1984, recommending that the application of Master Purveyors, Inc., for a casino service industry license be granted; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 16, 1985, to affirm and adopt the said initial decision and to grant the application,

IT IS on this 14th day of FEBRUARY 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Master Purveyors for a casino service industry license be and hereby is granted based upon the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Master Purveyors, Inc., the Office of Administrative Law and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6452-83

AGENCY DKT. NO. 83-CSI-10

MASTER PURVEYORS, INC.,

Applicant,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Edwin J. Jacobs, Jr., Esq., for the applicant (Tort, Jacobs, Todd & Bruso, attorneys)

James C. Fogarty, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 11, 1984 Decided: November 26, 1984

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Master Purveyors, Inc. (Master Purveyors), applicant, to the Casino Control Commission (Commission) for licensure as a casino service industry, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, although it did not oppose licensure, raised issue with the application concerning the good character, honesty and integrity of Sam Solasz, the corporate qualifier, pursuant to N.J.S.A. 5:12-89b(2) and N.J.A.C. 19:43-1.3(c). More specifically, the Division raised issue with the fact that Mr. Solasz opened and used a line of credit at the Playboy-Elsinore Associates (PEA) casino and the fact that PEA placed meat orders with Master Purveyors.

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PROCEDURAL HISTORY

Master Purveyors filed an application with the Commission. By letter dated July 22, 1983, the Commission advised the applicant that, based upon information received in a report from the Division, dated April 12, 1983, there was a "substantial possibility" that the Commission would deny the application and that Master Purveyors had a right to a hearing. By letter dated August 2, 1983, the applicant requested a hearing. On August 18, 1983, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Following unsuccessful settlement negotiations between the parties, a prehearing conference was held on April 26, 1984. The matter was heard on July 3 and October 11, 1984, at which time the record closed.

PRELIMINARY MATTER

Following the hearing on July 3, 1984, a dispute arose with regard to the appearance of the word "fix" at lines 5, 7, and 12 on page 262 of the transcript. The court reporter used the word "fix," and upon an examination of his notes, was of the opinion that the word fix was correct. However, based upon a review of my notes of the hearing and a review of the disputed section of the transcript, I am persuaded that the word "fix" is a misstatement and that the word used by counsel and the administrative law judge was "fact."

It is **ORDERED** that the form of the record be corrected by substituting the word "fact" for the word "fix" at lines 5, 7, and 12 on page 262 of the transcript of the hearing on July 3, 1984.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Master Purveyors is a wholesale meat distributor with its corporate headquarters in New York City, New York. The company was started on September 1, 1957, by Sam Solasz, currently its chief executive officer. Master Purveyors has several

divisions, which include Temple Beef, Old Bohemian and S & S Meat. The company has 23 employees, including butchers and drivers.

Mr. Solasz is the sole qualifier of the company. Accordingly, his good character, honesty and integrity were in issue.

Mr. Solasz was born in Bialystok, Poland, on May 5, 1928 (P-15). He was a teenager at the time Germany and Russia vied for control of Poland. He worked in the slaughterhouses in the Bialystok ghetto. At age 14 he was placed on a train with other prisoners en route to the extermination camp at Treblinka. He was shot when he escaped alone from the train. At this time he was separated permanently from his family. Mr. Solasz joined and fought with Russian partisans against the German Army from August 1943 to July 1944, when the liberation occurred. He then returned to Bialystok and discovered that the city had been eliminated and that his relatives were gone. He ultimately crossed Czechoslovakia to Munich where he joined friends. He remained in a displaced persons camp in Germany until 1945, when he opened a butcher shop in Nuremberg.

In 1948, Mr. Solasz emigrated to Israel, where he resided for the next two years. He met his wife of 27 years in a kibbutz. Also, he served 18 months in the Israeli Army.

In 1951 Mr. Solasz emigrated to the United States. He worked two jobs for twenty hours per day for six and one-half years. He then started his own meat purveying business.

Mr. Solasz and his wife are the parents of three children; his eldest son is employed by Master Purveyors, his daughter is a medical doctor and his youngest son is currently enrolled in college. Mr. Solasz has also been involved in many community and charitable efforts. He is currently president of the Bialystoker Center and Home for the Aged in New York City, a charitable organization which takes in and cares for homeless survivors of the Holocaust. Mr. Solasz is personally responsible for the publication of The Bialystoker Memorial Book (P-15). He has contributed much time, money and raised additional monies for the publication of the book. Other examples of his charitable efforts include fund raising efforts for the construction of the Chaim Sheba Medical Center in Israel (P-18). Mr. Solasz has been honored by many Israeli and Jewish organizations for his philanthropic efforts.

Master Purveyors sells premium meat products to high quality restaurants and other facilities. More specifically, the company sells 80% prime meats which are of the highest quality. Mr. Solasz personally selects the meat sold from slaughterhouses in New Jersey and Pennsylvania and does not sell western beef. Master Purveyors pays a premium for this quality, which cost is passed on to its customers. Some of Master Purveyors' customers include the "21" Club, Luchow's, Charlie O's, Abe's Steak House, the Waldorf and various Hilton Hotels. Prior to 1981 Master Purveyors sold to several casino-hotels, but not to PEA (now Elsinore-Shore Associates). However, Mr. Solasz desired to sell to PEA.

During Mr. Solasz' efforts to obtain business from PEA, he came into contact with various employees of the casino-hotel. Included were: Arnold Fleischman, since August 1981 the president and managing director; Willard "Bucky" Howard, vice-president of gaming operations; Clifford J. Phifer, vice-president of administration and personnel; Edie Moran, director of purchasing during 1981 and until approximately mid-1982; Charles Player, employed from February 1980 to August 1983 and director of purchasing from July 1982 until August 1983; and Mark Green, employed since January 1982, and formerly assistant director of purchasing and currently assistant director of food and beverages.

During mid-1981, Mr. Solasz contacted Edie Moran in an effort to solicit business for Master Purveyors. This effort was unsuccessful. Mr. Solasz attributed his lack of success to his perception that Ms. Moran held his Jewish-Polish nationality against him. Nevertheless, Mr. Solasz persisted in his efforts. At the same time, he began to gamble at PEA's blackjack tables, where he lost heavily. In part, Mr. Solasz' gambling efforts were designed to attract attention to himself for the purpose of making business contacts. He also inquired of various employees of PEA, including Mr. Howard, with regard to his desire to do business with PEA. Ultimately, Mr. Solasz was given small orders, which he filled. Gradually Master Purveyors received sporadic orders. Eventually, the size and frequency of the orders increased substantially. The circumstances underlying this increase in business were in dispute and will be discussed, infra. Master Purveyors currently sells beef, veal, lamb and pork products to PEA, although beef is the primary purchase by reason of PEA's needs. PEA also purchases meat products from several other purveyors.

Concurrent with the increase of sales to PEA, Mr. Solasz continued his gambling activities at PEA and has lost substantial sum of monies. Although he

acknowledged that he gambles heavily, Mr. Solasz does not keep records of his wins or losses. A detailed summary of his gambling activities at PEA since October 1981 are set forth in the chart below. The chart was extrapolated from information contained in documents submitted by both parties (P-10 and P-11). Mr. Solasz testified that he has always paid off all gambling debts within two to three weeks of the the time they were incurred.

The following chart depicts the dollar amounts of sales by Master Purveyors to PEA, Mr. Solasz' net gambling win or loss, the amount of credit he had outstanding and the amount of authorized credit. The majority of the information is derived from a report by Agent Louis Kaniecki (P-11), submitted by the Division with additional information included in a report prepared by Frank Pelosi, certified public accountant, on behalf of Master Purveyors (P-10). Both preparers obtained their information from business records of PEA. Although there was some disparity between their tabulations, such were not considered to be of real significance.

1981

Mo./ Yr.	Master Purveyors Sales to PEA		Net Gaming Win (Loss)		Maximum Credit Credit Outstanding		Authorized Credit Line
	DGE	Acct.	DGE	Acct.	DGE	Acct.	
10/81	12,412		(152,100)		50,000		50,000
11/81	12,118	-	(26,500)	-	55,000	-	55,000
12/81	61,678	-	(72,800)	-	55,000	-	60,000
sub-total 1981	86,208	-	(251,400)	-			

1982

1/82	21,372	-	(96,900)	-	70,000	-	75,000
2/82	65,194	-	(48,600)	-	75,000	-	75,000
3/82	41,634	-	(67,200)	-	75,000	-	75,000
4/82	174,278	-	(93,000)	-	100,000	-	100,000
5/82	180,456	-	(196,800)	-	145,000	-	150,000
6/82	144,195	-	(132,500)	-	140,000	-	150,000
7/82	137,565	112,663	(6,000)	same	10,000	same	-
8/82	107,407	137,465	(9,400)	same	5,000	same	-
9/82	86,870	70,226	(176,100)	same	110,000	same	-
10/82	80,881	99,504	(50,700)	same	75,000	55,000	-
11/82	88,774	78,251	(245,200)	(113,350)	170,000	same	-
12/82	104,527	115,048	6,800	same	90,000	140,000	-
sub-total 1982	1,233,153	-	(929,600)	-			
(sub total 7/82-12/82)	606,024	613,157	(480,600)	(348,750)			

1983

1/83	87,951	same	(69,700)	(75,700)	125,000	same	-
2/83	89,056	same	(212,200)	(206,200)	165,000	same	-
3/83	152,255	118,171	(25,500)	same	165,000	same	-
4/83	149,459	143,366	(83,100)	same	150,000	same	-
5/83	148,684	253,622	35,500	169,300	80,000	same	-
6/83	280,042	225,540	(56,000)	same	150,000	same	-
7/83	129,043	-	33,100	-	175,000	-	225,000
8/83	349,792	-	(12,300)	-	160,000	-	175,000

9/83	161,667	-	(57,400)	-	175,000	-	175,000	
10/83	125,043	-	(14,500)	-	175,000	-	175,000	
11/83	180,615	-	(12,400)	-	200,000	-	200,000	
12/83	198,145	-	(138,100)	-	225,000	-	225,000	
sub-total 1983	2,051,753	-	(512,600)	-				
(sub-total 1/83-6/83)	907,447	917,706	(311,000)	(277,200)				

1984

1/84	157,438	-	(115,700)	-	250,000	-	250,000	
2/84	72,960	-	(101,000)	-	250,000	-	285,000	
3/84	102,631	-	29,700	-	260,000	-	265,000	
4/84	80,124	-	(86,400)	-	200,000	-	220,000	
sub-total 1984	413,153	-	(273,400)	-				
Total 10/81-4/84	3,784,267	-	(1,967,000)	-				

During the period from October 1981 through April 1984, Master Purveyors received approximately 51 percent of PEA's meat orders (P-9). Nevertheless, it was clear that the various vendors did not each sell the same product and PEA purchased different products from different vendors.

On many occasions, Mr. Solasz and Mr. Fleischman have met and had discussions. These discussions occurred while Mr. Solasz was a patron at PEA, but not

while he was gambling. Mr. Fleischman testified that he never discussed a patron's gaming activity. Another topic of discussion was Mr. Solasz' activities during the Holocaust. The remaining topics of discussion were in dispute and will be discussed, infra.

On various occasions, Master Purveyors has made meat deliveries to PEA on weekends and on Monday mornings.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute was the nature of the relationship between Mr. Solasz and PEA, i.e., was the relationship improper in any respect.

It was clear that Mr. Solasz believed Ms. Moran was an obstacle to his doing business with PEA. Therefore, he attempted to draw attention to himself and make contacts with corporate officials by gambling heavily. With these contacts, such as Mr. Howard, Mr. Solasz succeeded in being placed in touch with PEA officials, including Mr. Fleischman, who were in a position to direct that purchases be made by PEA from Master Purveyors and did so. This will be discussed in greater detail, infra.

The first area of inquiry is whether Mr. Solasz and any officers of PEA made any deal or arrangement whereby Master Purveyors would get business in exchange for Mr. Solasz' gambling at PEA. Mr. Solasz, Mr. Fleischman, Mr. Phifer and Mr. Howard all stated unequivocally that no deal, arrangement or understanding of any such kind was ever discussed or agreed to (P-18). Mr. Fleischman testified that such a subject would not be tolerated. Further, Messrs. Solasz and Fleischman testified that no conditions were ever placed upon Mr. Solasz, nor were any promises ever made to him. In addition, Messrs. Green, Aschiero and Player each testified that he is unaware of any such discussion. Although they were not in position to enter into such an agreement on behalf of PEA, they were in a position to detect the existence thereof and did not. However, Messrs. Solasz and Fleischman testified that their discussions did include the fact that Mr. Solasz desired to do an increased amount of business with PEA. Also, it was evident that Mr. Fleischman spoke with Mr. Phifer in this regard, which will be discussed in greater detail, infra. Further, during an interview on September 13, 1982, by Division

Agent Kaniecki, Mr. Solasz stated that he liked to owe money to PEA because it was a good business practice. Mr. Solasz testified that the reference was to his gambling losses and that he believed such losses might help Master Purveyors' position with PEA. However, Mr. Solasz also testified that he had no reason to believe that his gambling activity made any real difference to PEA, although the quality of his product did make a difference.

All of the evidence with regard to Mr. Solasz' contact with PEA officers, indicates that he, as a good salesman/businessman and as a substantial gambler, circumvented successfully a perceived obstacle in his efforts to do business with PEA. There was no evidence whatsoever of any agreement, deal, etc., between Mr. Solasz and any officer or employee of PEA.

The second area of inquiry concerns what occurred internally at PEA with regard to purchases from Master Purveyors and Mr. Solasz' gambling activities. Mr. Fleischman testified that he instructed Mr. Phifer to make purchases from Master Purveyors because Mr. Solasz was a good player. However, Mr. Fleischman's explanations during a December 11, 1982 interview with Agent Kaniecki were less specific (P-7). Mr. Fleischman also testified that he had not directed Mr. Phifer to make all purchases from Master Purveyors, but to make a majority of the purchases therefrom. The placement of all purchases with one supplier would not be a prudent business practice. Also, the witness testified that his directive to purchase from Master Purveyors was contingent upon the meat product's satisfying PEA's standards of quality, service and price, i.e., that Master Purveyors was an otherwise qualified vendor. Mr. Fleischman knew of the identity of many of Master Purveyors' customers, which were nationally renowned restaurants; accordingly, he believed this to be an excellent recommendation. Mr. Fleischman acknowledged fully that he considered Mr. Solasz' gambling activities at PEA and was fully aware that the applicant had incurred substantial losses. Mr. Fleischman viewed his decision as purely a business decision. In addition, Mr. Fleischman solicited a verbal opinion from corporate counsel that it was lawful for PEA to do business with Mr. Solasz. During mid-1982, Mr. Fleischman also directed Mr. Aschiero to conduct an analysis of the prices paid by PEA to Master Purveyors in comparison with the lowest prices bid by other purveyors (P-4). The report covered a two-month period and indicated that Master Purveyors' prices were approximately 10% higher than the lowest bid price and stated the results of a single yield test. This report will be discussed in greater detail, infra. However, the report did not affect PEA's practice of purchasing from Master Purveyors.

Mr. Phifer testified that he was directed by Mr. Fleischman to make all meat purchases from Master Purveyors. However, Mr. Phifer disagreed because of PEA's need to maintain alternate sources of supply. Mr. Fleischman acceded to this position. Mr. Phifer then directed the purchasing department to buy a majority of meat products from Master Purveyors. This directive was contingent upon the reasonableness of Master Purveyors' quality and price. In fact, he instructed Mr. Solasz to keep his prices down. Before implementing these directives, Mr. Phifer personally checked the Act and the regulations and determined that there would be no violation. Also, he acknowledged that Mr. Solasz' gambling at PEA was a major factor in the decision to purchase, but that it was not solely determinative. Further, the decision did not violate PEA's purchasing policy. The purchasing policy was not based on price alone; rather, it included consideration of an established business relationship with a supplier, the ability to deliver in a timely manner, the quality of the product, the price and PEA's payment schedule. PEA was notorious for making late payments and required suppliers who were willing to carry it for approximately 90 days. Mr. Phifer was of the opinion that Master Purveyors' quality was excellent and that their service was reliable. The meat product satisfied the standards of PEA and were acceptable to the executive chef. Mr. Phifer also testified to the memoranda to file authored by Edie Moran, dated January 25, 1982 and March 22, 1982, respectively (P-1 and P-2). Ms. Moran stated that she was directed by Mr. Phifer to make all meat purchases from Master Purveyors regardless of price. Mr. Phifer stated that the memos were an inaccurate representation of his instructions. More specifically, Master Purveyors' price was to be within a reasonable variation, i.e., within 10% of other bidders, and the quality and service were to remain high. Mr. Phifer further testified that Ms. Moran was in constant fear of the loss of her position and frequently authored memos which covered her perceived position. Last, Mr. Phifer testified that even if PEA had paid more for purchases from Master Purveyors than it might otherwise have, in consideration of Mr. Solasz' gambling losses at the casino, PEA made a good business decision.

Charles Player also testified to what occurred internally at PEA with regard to Master Purveyors. Mr. Player interpreted Mr. Phifer's directives to place meat orders with Master Purveyors as unusual although not improper. Based upon his knowledge of Mr. Solasz' gaming activities at PEA, Mr. Player considered PEA's decision to be mutually beneficial. He also examined the Act and the regulations and determined that the business relationship was not prohibited. Mr. Player authored memoranda on August 4, 1982 and on March 28, 1983 (P-5 and P-8). The memoranda contained Mr. Player's

interpretations of Mr. Phifer's directives. More specifically, Mr. Phifer had directed that the majority of PEA's meat purchases be made from Master Purveyors. Further, in his March 28, 1983 memorandum, Mr. Player stated that it was his interpretation that employees who refused to follow the directive would be subject to termination, although Mr. Phifer had not been that specific in his comments. Mr. Player further testified that PEA's purchasing policy was to secure the best quality product for the best price, which was not necessarily the lowest price. Nevertheless, PEA's relationship with Mr. Solasz and Master Purveyors was unique among PEA's meat purveyors.

Last, Mark Green testified that PEA's purchases from Master Purveyors were made at Mr. Phifer's direction; however, the order to purchase was conditioned upon the reasonableness of Master Purveyors' product and price. It was Mr. Green's impression that Master Purveyors' product was of excellent quality, as was its service. Further, although the purchasing department was directed to purchase a majority of its needs from Master Purveyors, such directives were never implemented formally. Mr. Green's testimony was substantially consistent with information he gave to Agent Kaniecki during an interview on June 28, 1982 (P-3).

The Division also raised issue concerning a statement contained in Ms. Moran's memorandum of March 22, 1982, which made reference to an incident wherein a purchase in excess of $12,000 was made by PEA from Master Purveyors without benefit of a purchase order (P-2). The order was placed by Leo Kessler, executive chef. Messrs. Fleischman, Phifer, Green, Player and Aschiero each testified that placement of the order was within the authority of the executive chef. Further, PEA had incurred a shortage over a weekend and had placed an order with Master Purveyors for a Monday morning delivery. This was considered to be an emergency situation and the procedures followed were within the standard operating procedures of the casino-hotel.

Again, the evidence with regard to this issue establishes that officers of PEA made a sound business decision to purchase a substantial quantity of meat from Master Purveyors. Factors considered included Mr. Solasz' gaming activities at PEA, the quality of product, price, and other minor factors. Master Purveyors' product quality was excellent, its service was excellent, its price was reasonable and Mr. Solasz lost a substantial amount of money in the casino. There was no evidence to suggest that the decision to purchase from Master Purveyors was anything other than a proper and excellent business decision.

Mr. Aschiero testified to his report of June 28, 1982 (P-4). The purpose of the report was to determine if Master Purveyors' prices were unreasonable. Mr. Aschiero was then an internal audit supervisor and is currently director of the Internal Audit Department. The witness testified that the analysis made was a "worst case summary." More specifically, the report compared what was paid to Master Purveyors with what would have been paid to the lowest bidder, although there was no assurance that the lowest bidder would have been selected in any event. Accordingly, the report has little, if any, significance.

The last area of inquiry concerns the Division's contentions that there is a correlation between Mr. Solasz' gambling activities and credit line at PEA and PEA's purchases from Master Purveyors. Agent Kaniecki has been employed by the Division for five years and is currently assigned to PEA. The agent is a graduate of LaSalle College with a major in finance, and he was employed previously as a comptroller for an automobile dealership. The witness testified that, in his opinion, there was a correlation between Mr. Solasz' gambling activities and sales to PEA. More specifically, there was a gradual acceleration of the line of credit and gambling at or about the same time sales increased.

Frank Pelosi, a certified public accountant, testified on behalf of the applicant. Mr. Pelosi conducted a study to determine if there was an arithmetic relationship between Mr. Solasz' gambling activities and purchases made by PEA from Master Purveyors (P-10, P-12, P-13 and P-14). Based upon graphic depictions of his analysis, the witness was of the opinion that there was no mathematical tie-in or correlation.

The educational and experiential background of both expert witnesses was financial in nature. It would not appear that this would qualify them as statistical experts. Nevertheless, I have considered their opinions. The Division's contention is, in essence, that there is an interdependence between the variables, including Mr. Solasz' gambling activities, his credit line and sales made to PEA, i.e., that there is a direct cause and effect relationship. A review of the graphs prepared by Mr. Pelosi provides a clear illustration that the purported correlation is nonexistent (P-12, P-13 and P-14). Aside from the basic relationship between Mr. Solasz' gambling activities and sales to PEA, which is not denied, there is no evidence to suggest that there is a direct cause and effect relationship. Agent Kaniecki's opinion lacked validity and, accordingly, reliability.

More specifically, the agent obtained his source information from various separate sections of PEA without determining if there was an interdependence between the variables, and he did not determine or consider the profit margin of either PEA or Master Purveyors and how that might bear upon the purported correlation. In addition, although I give little weight to Mr. Pelosi's opinion, his conclusion appears to be self-evident by virtue of his graphic presentation.

After consideration of the entire record in this matter, I further **FIND** that:

1. All of the evidence presented with regard to Mr. Solasz' communications with officers of PEA established that the relationship was purely business in nature.

2. There was no attempt to make, nor was any arrangement, deal, etc., made between Master Purveyors and PEA with regard to Mr. Solasz' gaming activities and sales to PEA.

3. There is a relationship between Mr. Solasz' gaming activities at PEA and PEA's purchase of meat products from Master Purveyors.

4. There was no evidence whatsoever presented to even suggest that the relationship between Master Purveyors and PEA was improper in any respect.

5. Mr. Phifer, at Mr. Fleischman's direction, ordered the purchasing department to obtain a majority of the meats needed by PEA from Master Purveyors.

6. The decision to make a majority of PEA's meat purchases from Master Purveyors was based upon Mr. Solasz' gaming activities at PEA, the high quality of Master Purveyors' product, the excellence of service, the reasonableness of Master Purveyors' price, as well as other minor factors.

7. The decision by PEA to purchase from Master Purveyors was a sound business decision.

8. There was no evidence whatsoever to suggest that PEA's decision to purchase from Master Purveyors was improper in any respect.

9. The significance of the Aschiero report of June 28, 1982, supports PEA's management decision to do a substantial volume of business with Master Purveyors.

10. There was no valid or reliable evidence to establish that there is a correlation, i.e., an interdependence or a cause and effect relationship between Mr. Solasz' gaming activities and credit line at PEA, and PEA's purchase of meat products from Master Purveyors.

DISCUSSION OF LAW AND CONCLUSION

All entities which do business with casino hotels, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to Section 92c of the Act. N.J.A.C. 19:41-1.3(c)1. Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of section 86 of the Act, pursuant to N.J.A.C. 19:41-1.32. Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of applicant entities are required to establish their qualifications.

It is well settled that the character and responsibilities of a corporate entity can be judged only by that of its owners or managers—those who give it direction. Trap Rock Industries, Inc. v. Kohl 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S. Ct. 1500, 32 L.Ed. 2d 796 (1972). Therefore, in order to determine the fitness of the applicant business entity, its principals, although not required to be licensed, are required to establish their qualifications under section 86 of the Act and to establish their good character, honesty and integrity.

In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The

reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises an objection under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses. Casino Control Commission November 13, 1980, at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The Act established a comprehensive scheme of regulation over the casino industry and its attendant business. Legalized casino gaming in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to the most pervasive and stringent regulation. In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. Casino Control Commission 85 N.J. 325, 328, app. dism., 454 U.S. 804 (1981), aff'd as modified, 90 N.J. 361, app. dism., 103 S. Ct. 562 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate at 381:

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(o)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions. . .are designed to extend strict State regulation to all persons. . .practices and associations related to" casinos and that "comprehensive law enforcement supervision. . .is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)(7).

The essential issue in this matter concerns the propriety of the relationship between Mr. Solasz and PEA, i.e., Mr. Solasz' gaming activities at PEA and the sales by Master Purveyors to PEA. There was no evidence of any kind to establish that there was criminal wrongdoing, a violation of the Act or regulations, or that the relationship was otherwise nefarious. On the contrary, the evidence established that the relationship has

been and continues to be purely business in nature and proper in all respects. The greatest difficulty in writing this decision is to avoid giving any weight to and otherwise dignify the potentially negative suggestions regarding the business relationship between PEA and Master Purveyors. The affirmative presentation by Mr. Solasz and Master Purveyors as well as the absence of any negative factors, established, by overwhelming proportions, their good character, honesty and integrity. The licensure of Master Purveyors would present no risk to the public or to the integrity of gaming operations.

I **CONCLUDE** that Mr. Solasz and Master Purveyors have established, by clear and convincing evidence, their good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Master Purveyors, Inc., for licensure as a casino service industry, under N.J.S.A. 5:12-92c, be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 26, 1984
DATE

Richard L. Voliva, J.A.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 30 1984
DATE

Ronald L. Parker/pkw
OFFICE OF ADMINISTRATIVE LAW

509

bc

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

P-1 Playboy-Elsinore Associates - Interoffice Correspondence, Memorandum to File from Edie Moran, dated January 25, 1982

P-2 Playboy-Elsinore Associates - Interoffice Correspondence, Memorandum to File from Edie Moran, dated March 22, 1982

P-3 Division of Gaming Enforcement - Interview Report, Mark Green, by Investigator Louis J. Kaniecki, dated June 28, 1982 (2 pages)

P-4 Playboy-Elsinore Associates - Interoffice Correspondence, Memorandum from Robert J. Aschiero to Arnie Fleischman, dated June 28, 1982 (5 pages)

P-5 Playboy-Elsinore Associates - Interoffice Correspondence, Memorandum from Charles Player to Mark Green and Linda Weimer, dated August 4, 1982

P-6 Division of Gaming Enforcement - Investigation Report, prepared by Investigator Louis J. Kaniecki, October 5, 1982, page 3 of 34

P-7 Division of Gaming Enforcement - Interview Report, Arnold Fleischman, by Agent Warren W. Argentiere, dated December 22, 1982

P-8 Memorandum to File from Charles Player, dated March 28, 1983

P-9 Tally Sheet of Purchases Made by PEA from Master Purveyors, Inc., v. Other Meat Vendors, from April 17, 1981 to January 1, 1983 (4 pages)

P-10 Report prepared by Frank Pelosi, of Capaldi, Schalick & Reynolds, Certified Public Accountants, May 14, 1984 (3 pages)

P-11 State of New Jersey, Division of Gaming Enforcement - Investigation Report, prepared by Agent Lou Kaniecki, dated June 6, 1984 (5 pages)

P-12 Graph number 1, prepared by Frank Pelosi, C.P.A.

P-13 Graph number 2, prepared by Frank Pelosi, C.P.A.

P-14 Graph number 3, prepared by Frank Pelosi, C.P.A.

P-15 The Bialystoker Memorial Book, published by the Bialystoker Center, New York, 1982, excerpts: title page, two introductory pages, editorial committee, pages v, vi, vii, and pages 147 and 148 (9 pages)

P-16 Master Purveyors, Inc. - Price List for Playboy Hotel and Casino for week beginning April 16, 1984

P-18 Letter to Mr. Sam Solasz from Professor N. Shani, dated July 20, 1983 together with photographs (6 pages)

P-19 Transcript of Tape Recorded Telephone Conversation between Edwin J. Jacobs, Jr., Esq., and Willard "Bucky" Howard, conducted on July 5, 1984, certified on July 9, 1984 (2 pages)

The Division of Gaming Enforcement adopted applicant's exhibits numbers P-1, P-2, P-5 and P-7.

(B) EXHIBITS NOT ADMITTED INTO EVIDENCE

P-17Id. Sales Summary (4 pages) (Original of P-9 in evidence)

P-20Id. Sam Solasz comparison with loss report in Master Purveyors, Inc.

R-1Id. Document referring to "all other vendors" (4 pages) (exhibit not offered)

WITNESS LIST

FOR THE APPLICANT:

Robert Aschiero
Hope Brooks
Arnold Fleischman
Mark Green
Peggy McGinnis
Frank Pelosi
Sam Solasz

FOR THE RESPONDENT:

Clifford J. Phifer
Charles Player
Louis Kaniecki

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 45423-21
AGENCY DOCKET NO. 84-EA-54
OAL DOCKET NO. CCC 5049-84

IN THE MATTER OF THE APPLICATION
OF THOMAS J. McCORMICK
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 17, 1984, recommending that the application of Thomas J. McCormick for a casino employee license be denied; and no exceptions or objections having been filed; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 30, 1985, to affirm and adopt the said Initial Decision and to deny the application,

IT IS on this 7th day of FEBRUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Thomas J. McCormick for a casino employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Thomas J. McCormick is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Thomas J. McCormick, the Division of Gaming Enforcement and all autnorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5049-84
AGENCY DKT. NO. 84-EA-54

THOMAS J. MC CORMICK,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Respondent.

Thomas J. McCormick, petitioner, pro se

Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 30, 1984 Decided: December 14, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In March 1983, petitioner applied for a casino employee license to work as a security employee. By letter dated March 12, 1984, the Division of Gaming Enforcement (Division) objected to petitioner's licensure, alleging that on October 18, 1976 he was arrested by the Buena Boro Police Department for carnal abuse, in violation of N.J.S.A. 2A:138-1 (now cited as N.J.S.A. 2C:14-2); lewdness, in violation of N.J.S.A. 2A:115-1 (now cited as N.J.S.A. 2C:14-4) and contributing to the delinquency of a minor in violation of N.J.S.A. 2A:96-4 (now cited as N.J.S.A. 2C:24-4). The Division alleged that petitioner's case was true billed by the Atlantic County Grand Jury, but that the charges were

dismissed on March 11, 1978, in the interest of the child involved in the matter. The Division also alleged that the petitioner failed to disclose his arrest on his Personal History Disclosure Form - 2A (PHDF).

A prehearing conference resulted in the entry of a Prehearing Order on August 29, 1984, which defined the following issues to be addressed at the hearing:

1. Did the petitioner fail to disclose the October 18, 1976 arrest on his PHDF and during an interview with a Division investigator, in violation of N.J.S.A. 5:12-86b?

2. Can petitioner demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required for licensure by N.J.S.A. 5:12-89b(2) as incorporated into N.J.S.A. 5:12-90b?

A hearing was held on October 30, 1984 in Bridgeton, New Jersey.

FACTUAL FINDINGS

On October 18, 1976, petitioner was arrested by the Buena Boro Police Department for carnal abuse, lewdness, and contributing to the delinquency of a minor, in violation of N.J.S.A. 2A:138-1, 2A:115-1, and 2A:96-4 (R-1). The matter was true billed by the Atlantic County Grand Jury on October 28, 1976. The charges resulted from allegations that petitioner had sexual relations with his 10-year-old female cousin on three occasions during early 1976. The charges were eventually dismissed when the mother of the child (petitioner's aunt) decided to withdraw the charges because her "daughter was doing fine" (P-1). On the day of the arrest, petitioner signed a three-page statement admitting that he did have sexual relations with his ten-year-old cousin on three occasions (R-2). A written statement was also signed by the petitioner's cousin on October 18, 1976, which corroborated that she had sexual relations with petitioner (R-3). Petitioner does not dispute that the incidents occurred. Although he testified that he did not agree exactly with the wording of both statements (R-2 and R-3), he admitted that he did sign his statement (R-2), that he was "scared" when he signed the statement, and that he wanted to "get out of there." Petitioner was not represented by legal counsel at the time of the arrest or when he signed the statement. Approximately one or two months

after petitioner signed the statement, he spoke to a psychiatrist on one occasion. Petitioner did not undergo any further counseling or therapy.

When petitioner completed his PHDF on March 15, 1983, he answered "no" to question 16 which specifically states the following:

> For the purpose of this question, the word "arrest" includes any detaining, holding, or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other state or foreign county [sic]; the word "charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense" in this or any other state or foreign country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offenses and juvenile violations.
>
> Have you ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?

Below question 16 is a "note" which states "You need not disclose any arrest or charge which has been the subject of a lawful court order or expungement or sealing if such order entitles you to answer 'no' to such inquiry."

When petitioner completed his PHDF, he did not feel that question 16 applied to him because the charges had been dismissed. When petitioner completed the form, he was assisted by his sister, Rebecca Jean Giovanelli, who telephoned the Atlantic City Office of the Casino Control Commission to inquire as to whether petitioner would have to answer question 16 affirmatively. (Both petitioner and his sister, after discussing the matter, thought that question 16 might not require an affirmative answer because of the language contained in the note to question 16.) After speaking to several persons, Ms. Giovanelli was connected with an unidentified person to whom she explained that her brother had been taken into custody, charges were filed against him, which charges were ultimately dismissed. Ms. Giovanelli does not recall using the word "expungement" during her conversation with the Casino Control Commission employee. Based upon this conversation, the employee advised Ms. Giovanelli that it was not necessary to report the arrest. Petitioner then answered "no" to question 16 and went on to complete the rest of the form. Both petitioner and his sister were aware that his arrest was a matter of

record, and discussed with each other the fact that any investigation conducted in connection with his application would independently reveal the arrest. Ms. Giovanelli stated with regard to the negative answer given to question 16:

> It's a real pressure for Tom to have to even remember the details of anything and I'm sure because we were both embarrassed somewhat, I'm sure and we said no and went on. We both were fully aware that it was a matter of record and we even asked Michael [petitioner's brother] who was a police officer in this state, and you know, he said you should put it down and we told him we called the control commission and they said we didn't have to put yes so he said I guess you should answer no, but it was just our opinion. We are not attorneys or anything and that is not something that we would know as to what the legal ramifications would be or whatever.

Petitioner stated that had he not read the note to question 16, he would have reported the arrest on the PHDF. He stated, "I knew they were going to check me out, I have nothing to hide." When questioned by the Division's legal representative as to whether petitioner felt that answering "no" to question 16 would improve his chances for obtaining his license he stated, "I had that in the back of my mind. I know when they checked me out they were going to have all of the information right there because my sister and brother-in-law both worked down the casino."

Duane Daniels has been employed by the Division as a detective for approximately 13 months. On January 19, 1984, he conducted a telephone interview of petitioner in connection with his license application. At the time of the interview, Detective Daniels was aware of petitioner's October 18, 1976 arrest. During the interview, Detective Daniels read question 16 to petitioner and asked him if he understood the question to which petitioner replied, "yes." Petitioner then denied that he had been arrested. Detective Daniels then informed petitioner that he had information from the FBI that indicated that petitioner had been arrested in 1976. Petitioner then admitted that he had been charged with various offenses, but stated that because the charges had been dropped, he felt as though he had not been arrested.

The mother of the child involved in the incident prepared a recommendation letter on behalf of petitioner stating that he ". . .has changed and grown to be a mature and responsible person. He is a hard worker and very reliable. If you allow him to receive

his license, I know that he would do a good job, no matter which casino he worked in. It was unfortunate he failed to report being arrested, but he felt that charges had been dropped, and didn't think he had to put it in his application" (P-1).

On September 15, 1984, petitioner received a letter of commendation from the Director of Operations of Great Adventure as a result of petitioner and his cousin rescuing a ride operator who was found floating face down in the water at the "Roaring Rapids" ride at the adventure park (P-2, P-3).

Petitioner is 28 years old and has two male children who visit with him on the weekends (petitioner is divorced from his first wife and separated from his second wife). Petitioner has maintained steady employment since September 1976, working for various employers in the position of truck driver, tractor driver and delivery person. He changed jobs on several occasions due to a desire to earn more money.

During his closing argument, petitioner stated:

> Every job that I ever had, I worked very hard to keep it. All I want to do is have a good job and have a chance to make some more money. It seems everything I do something goes wrong for me. It doesn't seem to work out and I know what I did back then in '76 was wrong but I feel I'm still paying for it and I'll probably be paying for it for the rest of my life but I've come a long way since that time and I try to better myself and if I can get this job down the casino, it would mean an awful lot to me. All I want is a chance, that's all.

Ms. Giovanelli stated that while petitioner has numerous friends who trust him and care about him and would come to his defense, it was not appropriate for petitioner to bring these witnesses to the hearing to testify because ". . .we just didn't want to disclose all of this to all our friends and relatives."

DISCUSSIONS AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86b provides that a casino license shall be denied to any applicant for failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria. Petitioner clearly failed to disclose information which was material to the evaluation of his qualifications for licensure. Failure to disclose his October 1976 arrest was intentional, not merely inadvertent, having resulted after a

discussion of the matter with his sister, his brother, and after a telephone call made by his sister to an unidentified person at the Casino Control Commission. I have no doubt that a telephone call was made to the Casino Control Commission, however, the testimony was vague as to the details of the conversation between Ms. Giovanelli and the unidentified Commission employee. The testimony revealed that Ms. Giovanelli did not recall discussing the term "expungement," and that she did not inform the Commission employee that the matter had been true billed by the Atlantic County Grand Jury. Rather, she told the Commission employee that ". . .he was taken in and there were charges filed against him and they were dropped and it never went to the court because it was dismissed or whatever because it was thrown out and I didn't know that that was something that was brought to a jury. I found that out today, too. I didn't know that anything ever left Buena Boro Police Station because I guess I was under the assumption that the charges are made and charges are dropped and that's it. It's nothing." I give minimal weight to this conversation, absent knowing precisely what was discussed between Ms. Giovanelli and the commission employee.

The decision to be rendered in this matter is difficult. While I am sympathetic to petitioner's desire to repress his memory of the unfortunate incidents resulting in his October 1976 arrest, and I find commendable his desire to financially improve himself, I find unacceptable his explanation as to his failure to report the arrest on his PHDF. I note that I am not questioning petitioner's credibility, but rather, I question the judgment he exercised in answering "no" to question 16. Question 16 clearly defines the word "arrest," and clearly queries whether an applicant has been arrested, <u>even if not convicted.</u> Petitioner testified that had he not read the "note" to question 16, he would have answered "yes." Petitioner did not have a court order which would entitle him to answer "no" to question 16. Notwithstanding that he professed confusion as to the proper way to answer question 16, I cannot overlook his testimony that he was aware that by answering "yes" the question, his chances of obtaining his license might be impaired. Further, petitioner and his sister both testified that they knew that any further investigation conducted by the Division would reveal the arrest. It is difficult to explain why petitioner would not have truthfully answered the question if he truly believed that the arrest would be revealed during further investigation. Petitioner was afforded a second opportunity to mention the arrest during the interview with Detective Daniels, yet petitioner did not reveal the arrest until Detective Daniels confronted him with information provided by the FBI. Regrettably, I must conclude that petitioner's decision to answer no to question 16 was due to an optimistic interpretation of the "note" to the

question. While I can appreciate petitioner's emotions in wanting to forget that the incident occurred and to pass over question 16 quickly, I cannot condone his actions. The declaration of public policy as set forth in N.J.S.A. 5:12-1b(6) provides, in pertinent part:

> An integral and essential element in the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process in the casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided. . .

The strict regulatory process required in the licensing of applicants must be strictly adhered to. To permit an applicant to apply an optimistic and favorable interpretation to PHDF questions (including notes to the questions) in order to avoid having to disclose negative information would clearly erode the strict regulatory process involved in the licensing of applicants. This is particularly the case when the question at issue, i.e., question 16, is stated in clear and precise language. Therefore, I **CONCLUDE** that petitioner is disqualified from receiving a casino employee license to work in security, based upon his failure to disclose his October 1976 arrest on his PHDF, which fact was material to his qualification for licensure, within the meaning of N.J.S.A. 5:12-86b.

N.J.S.A. 5:12-89b(2) requires each license applicant to demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. The nature of the offenses for which petitioner was arrested are inherently related to one's character and integrity. The civil burden of proof of clear and convincing evidence requires proofs that are ". . .so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." Aiello v. Knoll Golf Club, 64 N.J. Super. 156, 162 (App. Div. 1960).

The following positive factors are relevant in evaluating whether petitioner has demonstrated his good character, honesty and integrity by clear and convincing evidence:

1. Petitioner's only arrest is the one which occurred in October 1976.

2. Petitioner sincerely regrets the offenses which he committed in 1976.

3. Petitioner has maintained constant employment since 1976.

4. Petitioner has received a favorable recommendation from the mother of the child with whom he had sexual relations (P-1).

While I consider the above factors to be favorable to petitioner, I **CONCLUDE** that they are insufficient to meet petitioner's burden by clear and convincing evidence of his good character, honesty and integrity, based upon the unique facts and circumstances of this case. While I can appreciate petitioner's desire to leave the past alone and to not involve other persons in this matter through the production of oral testimony, I consider the absence of any supporting witnesses to be significant in this matter. The fact that petitioner's aunt is supportive of him is noteworthy but not in and of itself sufficient for petitioner to meet his burden of proof. The offenses which petitioner committed, are the kinds of offenses which have recently become the subject of widespread publicity and social awareness and go to the heart of one's moral fiber. It is difficult to attribute much weight to petitioner's aunt's letter, not having the opportunity to delve into her motivation for writing the letter. One must seriously question (absent the opportunity to observe live testimony from her) perceptions of a parent who shortly after her 10-year-old child had sexual relations with her 20-year-old cousin stated that the child "was doing fine." Absent additional proofs such as evidence from a professional counsellor, i.e., psychiatrist, psychologist, therapist and absent additional evidence presented by objective witnesses that petitioner possesses good character, honesty and integrity (based upon the specific nature of the offenses involved in this matter), I must CONCLUDE that petitioner has failed to meet his burden of proof by clear and convincing evidence.

ORDER OF DISPOSITION

It is therefore **ORDERED** that pursuant to N.J.S.A. 5:12-86b and N.J.S.A. 5:12-89(b)2 as incorporated into N.J.S.A. 5:12-90, that petitioner shall be denied a casino employee license.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 14, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

December 17, 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 19 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

WITNESSES

For Petitioner:

Thomas J. McCormick, petitioner
Rebecca Jean Giovanelli

For Respondent:

Detective Duane Daniels

EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Letter from Margaret Buonadonna, dated October 29, 1984

P-2 Newspaper article (undated) from the Vineland Times

P-3 Letter from Austin Jeter to petitioner, dated September 15, 1984

R-1 Boro of Buena Police Department arrest report, dated October 18, 1976

R-2 Statement of petitioner, dated October 18, 1976 (3 pages)

R-3 Statement of Mary Buonadonna, dated October 18, 1976 (3 pages)

R-4 Notice of Disposition of Atlantic County Grand Jury cases for October 28, 1976

R-5 Complaint in the matter of the State of New Jersey v. Thomas J. McCormick, dated October 18, 1976

R-6 Petitioner's Personal History Disclosure Form - 2A dated March 15, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-120
OAL DOCKET NOS. CCC 6126-83;
6834-82
APP. NO. 22816-21

APPLICATION OF ROSBOROUGH McMILLAN
FOR A CASINO EMPLOYEE LICENSE
(SECURITY EMPLOYEE)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on November 18, 1983, recommending that the application of Rosborough McMillan for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the initial decision on December 13, 1983; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on February 1, 1984, to reject the said initial decision and to deny the application for licensure of Rosborough McMillan,

IT IS on this 6th day of February 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Rosborough McMillan be and hereby is denied based upon the reasons set forth in the record of the Commission's public meeting of February 1, 1984, and the Commission decision which will be issued forthwith, which are incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Rosborough McMillan be and hereby is prohibited from reapplying for or obtaining any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent the applicant from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL DIVISION

DATED: February 6, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 82-FA-120
OAL DOCKET NO. CCC 6834-82

IN THE MATTER OF THE APPLICATION
OF ROSBOROUGH McMILLAN FOR
LICENSURE AS A CASINO EMPLOYEE

ORDER OF REMAND

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on May 23, 1983, recommending that the casino employee license application of Rosborough McMillan be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on June 14, 1983; and the Commission having carefully considered the entire record of the proceedings and having determined that evidence essential to make a proper and fair disposition of the application is lacking, and the Commission having resolved at its public meeting of July 20, 1983, to remand this matter to the Office of Administrative Law for the introduction of the outstanding transcripts of the federal criminal trial, United States v. Ellis, et al., and for proceedings consistent with their introduction,

IT IS on this 2nd day of August, 1983 ORDERED that this matter be and hereby is remanded to the Office of Administrative Law for introduction of the outstanding transcripts of the said criminal trial and for proceedings consistent therewith; and

IT IS FURTHER ORDERED that copies of this Order be served upon the Respondent and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL DIVISION

DATED: August 2, 1983

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6126-83

AGENCY DKT. NO. 82-EA-120

(CCC 6834-82 REMANDED)

ROSBOROUGH J. MC MILLAN,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Michael R. Paglione, Esq., for petitioner (Paglione, Massi and DeGeorge, attorneys)

Ralph L. Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 3, 1983 Decided: November 17, 1983

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Rosborough J. McMillan to the Casino Control Commission for a casino employee license permitting him to work in a casino as a security officer. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

New Jersey Is An Equal Opportunity Employer

1. Whether the petitioner, with specific reference to his conviction for conspiracy to violate civil rights, in violation of 18 U.S.C. § 241, lacks the requisite good character, honesty and integrity for licensure, within the meaning of section 89b(2), as incorporated in section 90 of the Casino Control Act.

2. Whether the petitioner, with specific reference to his conviction for conspiracy to violate civil rights, has been convicted of or has committed any offense which would indicate that licensure would be inimical to the policies of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the act, even if such conduct has not been or may not be prosecuted under the criminal laws of this state, within the meaning of section 86g of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 20, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

An Initial Decision was issued on May 20, 1983, and filed with the Casino Control Commission for its review. The Initial Decision recommended by the terms of its order of disposition that the application of the petitioner for a casino employee license be granted. The Division of Gaming Enforcement filed exceptions to the Initial Decision on June 14, 1983.

The Casino Control Commission considered the entire record of the proceedings and determined that evidence essential to make a proper and fair disposition of the application was lacking. Accordingly, the Commission resolved at its public meeting of July 20, 1983 to remand this matter to the Office of Administrative Law for the introduction of the outstanding transcripts of the federal criminal trial, United States v. Ellis, et al., and for proceedings consistent with their introduction. The Commission Order of Remand was entered on August 2, 1983, and the matter was returned to the Office of Administrative Law.

A prehearing conference was scheduled for October 3, 1983. The record was closed on that date upon the introduction of the outstanding transcripts and the confirmation by counsel for the parties that they did not intend to present any further evidence or argument.

FINDINGS OF FACT

The petitioner is a 46-year-old resident of Willingboro, New Jersey. He is married and is the father of seven grown children. The petitioner attended both public and parochial schools in Philadelphia, Pennsylvania, and he joined the Marine Corps at the age of 17, upon his graduation from high school. After serving in the Marine Corps for three years, the petitioner entered the Philadelphia Police Academy in 1957.

After serving as a highway patrolman and a communications console commander, the petitioner was promoted to the rank of detective in 1970. In 1972, the petitioner was permanently assigned as a homicide detective. While serving as a detective, the petitioner received 3 commendations for meritorious service and 1 commendation for bravery. The petitioner retired from the Philadelphia Police Department in 1979, after 22 years of service.

For the past 2 1/2 years, the petitioner has been employed as a security supervisor by Harrah's Marina Casino Hotel in Atlantic City, New Jersey. The petitioner is presently authorized to perform his security duties in the hotel portion of Harrah's and he seeks licensure which would permit him to perform his duties on the casino floor. The petitioner has a reputation for superior performance at Harrah's. Testifying on the petitioner's behalf, Assistant to the Director of Security Donald Patterson stated that he was formerly a captain in charge of the Philadelphia Police Department Homicide Division and that he has known the petitioner for approximately 25 years. In his present supervisory capacity at Harrah's, he has observed the petitioner exhibit patience, compassion and intelligence while performing his security duties. According to Mr. Patterson, the petitioner's police experience aids him in the performance of his present duties. The petitioner has received several commendations from Harrah's for his performance as a security officer. Harrah's Director of Surveillance, Arthur Matthews, also testified on behalf of the petitioner. According to Mr. Matthews, the petitioner is a man of strong character who is well-liked and greatly respected by his colleagues.

An incident concerning the petitioner's conduct while serving as a homicide detective for the Philadelphia Police Department in October 1975 is material to this proceeding on his application for licensure as a casino employee. On October 5, 1975, the petitioner was one of many homicide detectives assigned to investigate the fire bombing of a home owned by Radamas Santiago on North 4th Street in the Feltonville section of Philadelphia. Five occupants of the Santiago home were murdered as a result of the fire bombing, including Santiago's wife and three of his children. Nelson Garcia, a 14-year-old friend of the Santiago's who had been sleeping on the front porch of the home when it was fire bombed, fled from the home, looking for a fire alarm. He observed Robert Wilkinson in an automobile stopped near the Santiago home. Garcia assumed, contrary to fact, that Wilkinson had been responsible for the fire bombing. When he was interviewed by the investigating Philadelphia Police officers, Garcia accused Wilkinson, who was promptly arrested.

Wilkinson was taken to the Philadelphia Police Administration Building, where he was questioned by several homicide detectives. Eventually, he signed a confession to the fire bombing, although he had not committed the crime. Wilkinson was tried and convicted in the Philadelphia Common Pleas Court on five counts of murder. Subsequently, the person who had actually thrown the fire bomb, David McGinnis, acknowledged his guilt. Wilkinson's conviction was reversed, after he had spent 15 months in prison.

Federal authorities investigated the efforts of six Philadelphia homicide detectives to procure the evidence which led to the conviction of Robert Wilkinson. On October 4, 1977, a Federal Grand July indicted the petitioner and five other detectives, John Ellis, James Carty, James Curley, William Jones and James Crown, for conspiracy, under color of Pennsylvania law, to violate the civil rights of various individuals subjected to detention and interrogation in the investigation of the Santiago fire bombing. Among the overt acts alleged to have been committed in furtherance of the conspiracy to violate civil rights were physical abuse and threats, contrary to 18 U.S.C. § 241. In successive counts of the indictment, the petitioner and the other officers of the Philadelphia Police Department were alleged to have violated the civil rights of certain individuals by physical assaults, contrary to 18 U.S.C. § 242 (Exhibit R-1).

In March 1978, Judge Donald W. VanArtsdalen of the United States District Court for the Eastern District of Pennsylvania, presided at the jury trial of the six Philadelphia homicide detectives. Transcripts of the criminal trial were admitted into

evidence as Exhibits J-1 through J-11. The jury convicted all six of the detectives of conspiracy against the rights of citizens, in violation of 18 U.S.C. § 241. However, the jury specifically found that the petitioner was not guilty of physically assaulting any of the conspiracy victims. The petitioner and the other five homicide detectives were sentenced by Judge VanArtsdalen to a custodial sentence for a term of 15 months, at the Federal Prison Camp at Eglin Air Force Base, Pensacola, Florida. The sentences were ultimately reduced to six months and the petitioner was released after having been incarcerated for five months and 21 days.

Karl Lunkenheimer, Esq., an Assistant Philadelphia District Attorney from 1973 until 1979, testified on behalf of the petitioner. According to Mr. Lunkenheimer, he came to know the petitioner while assigned to the Felony Jury Unit of the District Attorney's Office. Since it was necessary to call the petitioner as a witness on behalf of the prosecution in a number of criminal trials, Mr. Lunkenheimer learned that the petitioner has an excellent reputation among the homicide detectives. He characterized the petitioner as exceedingly honest and hard-working, and dedicated to his profession.

In addition to favorable testimony concerning the petitioner's reputation for good character, honesty and integrity which was offered at the hearing, numerous letters of recommendation were admitted into evidence as Exhibits P-1 through P-14. Among these are letters from judges of the Court of Common Pleas of Pennsylvania and a letter from Justice James T. McDermott of the Supreme Court of Pennsylvania (Exhibit P-14). In essence, these letters establish that the petitioner is held in high regard for his personal honesty and good character, and for his dedication as a public servant of the highest caliber.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns the conduct of the petitioner while investigating the Santiago fire bombing on October 5, 1975. It was the emphatic testimony of the petitioner that he had not physically assaulted or threatened any of the victims of the conspiracy to violate civil rights. The only individual interviewed by the petitioner in regard to the Santiago fire bombing was Vincent Cucinotta. Cucinotta told the petitioner that he knew nothing about the fire bombing and he was not arrested. The petitioner denied entering any other interview room on October 5, 1975, and it was his

testimony that he never saw victims Ronald Hanley and David McGinnis until they testified against him in the federal criminal trial. The petitioner also specifically denied that he ever questioned victim John McCandless in regard to the Santiago fire bombing.

John McCandless was the only witness to testify on behalf of the Division of Gaming Enforcement. According to Mr. McCandless, he and his wife were brought to the police administration building and were separated for questioning. McCandless told Detectives Crown and Carty that he knew nothing about the fire bombing. When he persisted in his denial, he was struck by an unidentified detective. According to McCandless, he was later questioned by the petitioner. The petitioner accused him of lying and the petitioner threatened to punch him in the chest, to make his heart stop.

In his testimony at the hearing, McCandless stated that he was told by the petitioner that the petitioner was tired and under pressure to get the Santiago fire bombing case solved. McCandless stated that he also gave this testimony in the federal criminal trial against the petitioner and the other homicide detectives. However, the transcript of the federal trial does not reveal any testimony by McCandless that indicates the petitioner said he had to get the fire bombing solved. McCandless also offered conflicting testimony on direct and cross-examination concerning suits for damages which he has filed against the City of Philadelphia and its officials.

A summary of the evidence presented by the United States Government against the six homicide detectives with respect to each victim of the conspiracy, which evidence the jury could have found to be true, appears in the opinion of Circuit Judge Gibbons in United States v. Ellis, et al, 595 F. 2d 154 (3rd Cir. 1979), which was admitted into evidence as Exhibit R-2. The testimony presented by the government's witnesses implicates the petitioner in the beatings of Robert Wilkinson, David McGinnis and Vincent Cucinotta. However, it is fair to doubt whether the jury actually believed this testimony concerning the petitioner because he was found to be not guilty on the specific counts of the indictment which alleged that he had participated in the physical beating of the conspiracy victims. While it cannot be disputed that the jury found the petitioner and the other homicide detectives guilty of conspiracy to deprive individuals of federal civil rights, beyond a reasonable doubt, it would appear that the jury did not believe that the petitioner had participated in physical assaults as an overt act in furtherance of the conspiracy. At the hearing, the petitioner earnestly denied participating in assaults and threats. The petitioner's testimony was straightforward and sincere, and entirely worthy

of credit. In light of this believable testimony, and in the absence of believable evidence to the contrary, I am unable to find that the petitioner actually participated in beatings and threats pursuant to his investigation of the Santiago fire bombing.

THE REMAND

Pursuant to the terms of the Commission's Order of Remand, the outstanding transcripts of the federal criminal trial were admitted into evidence as Exhibits J-12 through J-16. The most significant of these transcripts is the sentencing (Exhibit J-16) of the petitioner by Judge Van Artsdalen on April 21, 1978. Judge Van Artsdalen noted that the petitioner and the other defendants all appeared to be "dedicated police officers" who were "good family men with nothing in their pasts that would . . . reflect adversely on their character or reputation either as to their personal lives or their professional lives."

In his sentencing remarks, Judge Van Artsdalen emphasized that all of the defendant police officers were "to a large extent . . . victims of the system of police administration in this city (Philadelphia)," for which "the superiors on the police force in this case have a great deal of personal responsibility. . . ." Accordingly, Judge Van Artsdalen concluded that "punishment in this case of any sort can be useful only insofar as it may have a genuine deterring effect in the future, . . . as to all police officers." It was the sentencing judge's view that this deterring effect in the future could "only be accomplished by the imposition of some form of confinement."

As I previously indicated, the petitioner was found to be not guilty on the specific counts of the indictment which alleged that he had participated in the physical beating of the conspiracy victims. At the sentencing, Judge Van Artsdalen observed that it would be improper for him to consider any alleged specific act of wrongdoing as being an established fact, since the defendants had been convicted only on the conspiracy charge. While it would not be improper for me to make findings in regard to specific acts of wrongdoing, my review of the record in this matter, as supplemented by the terms of the Order of Remand, provides no credible evidence to support any findings of material fact in addition to those findings of fact set forth above.

CONCLUSIONS OF LAW

Pursuant to Section 89 and 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. These sections of the act also incorporate the disqualification criteria set forth in Section 86. Pursuant to Section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the act and to casino operations. Pursuant to section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under Section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

To determine whether a conviction for an offense would render an applicant's licensure inimical to the policies of the act requires consideration of several factors. The Casino Control Commission set forth in its opinion in The matter of the Application of Resorts International, Inc. For a Casino License, 79-CL-1 (February 26, 1979) at page 15, the criteria to be applied when such a determination is to be made:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would . . . encompass those offenses which, when viewed in the light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations.

The petitioner was convicted in 1978 for his participation in a conspiracy to violate civil rights which occurred in 1975. The violation of civil rights took place while the petitioner was performing his duties as a homicide detective with the Philadelphia Police Department, investigating a particularly violent and repugnant arson murder of five occupants of the Santiago house. The credible evidence in the record before me establishes that the petitioner's participation in the conspiracy to violate the civil rights of persons suspected of involvement in the fire bombing was limited. Apart from this

conviction, the petitioner performed commendably as a member of the Philadelphia Police Department for a period of 22 years. For the past two and one-half years, the petitioner has performed in an exemplary manner as a security officer at Harrah's Marina Casino Hotel.

Based upon the foregoing discussion and specific findings of fact, I **CONCLUDE** that the petitioner has not committed an offense which, when viewed in the light of all the circumstances, is of such a nature as to justifiably undermine public confidence in the integrity of the legalized gaming industry. Therefore, I further **CONCLUDE** that the petitioner has not committed any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations. Based upon the relevant and credible evidence in the record, I further **CONCLUDE** that the petitioner has established, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure, within the meaning of Section 89b(2) of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Rosborough J. McMillan, for a casino employee license permitting him to work in a casino as a security officer, be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 17, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 18 1983
DATE

Lawrence J. Fiore
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1	Transcript, dated February 21, 1978
J-2	Transcript, dated March 3, 1978
J-3	Transcript, dated March 6, 1978
J-4	Transcript, dated March 7, 1978
J-5	Transcript, dated March 8, 1978
J-6	Transcript, dated March 9, 1978
J-7	Transcript, dated March 10, 1978
J-8	Transcript, dated March 11, 1978
J-9	Transcript, dated March 14, 1978
J-10	Transcript, dated March 15, 1978
J-11	Transcript, dated March 17, 1978
J-12	Transcript, dated March 4, 1979
J-13	Transcript, dated March 13, 1979
J-14	Transcript, dated March 16, 1979
J-15	Transcript, dated March 20, 1979
J-16	Transcript, dated April 21, 1979

FOR THE PETITIONER:

P-1	Letter of recommendation from Judge Kenneth S. Harris, dated July 14, 1982
P-2	Letter of recommendation from Edward Saltzman, dated March 10, 1983
P-3	Letter of recommendation from Judge Lawrence Prattis, dated July 13, 1982
P-4	Letter of recommendation from Judge Charles L. Durham, dated July 15, 1982
P-5	Letter of recommendation from Judge Alfred J. Di Bona, Jr., dated July 22, 1982

P-6 Letter of recommendation from Judge Lynne M. Abraham, dated July 26, 1982

P-7 Letter of recommendation from Judge Juanita Kidd Stout, dated July 14, 1982

P-8 Letter of recommendation from Judge Levan Gordon, dated July 21, 1982

P-9 Letter of recommendation from Chief County Detective Gilbert M. Branche, dated August 2, 1982

P-10 Letter of recommendation from F.O.P. President Robert S. Hurst, dated July 14, 1982

P-11 Letter of recommendation from Gerald J. Dugan, Esq., dated July 14, 1982

P-12 Letter of recommendation from Assistant District Attorney Joseph C. Murray, dated July 23, 1982

P-13 Letter of recommendation from Karl K. Lunkenheimer, Esq., dated August 31, 1982

P-14 Letter of recommendation from Justice James T. McDermott, dated July 21, 1982

P-15 Newspaper article

P-16 Newspaper article

P-17 Sentence record

P-18 Reduction of sentence

P-19 Not in evidence

P-20 Time Magazine article, dated May 26, 1980

FOR THE RESPONDENT:

R-1 Certified Judgment of Conviction and Commitment Order, dated April 21, 1978

R-2 United States v. Ellis, et al, 595 F. 2d 154 (3rd Cir. 1979)

WITNESSES

FOR THE PETITIONER:

Karl Lunkenheimer
Arthur Matthews
Edward F. Valeica
Evelyn Gregory
Hilliard Perry
Donald Patterson
Kenneth Cooper
Josie McMillan
Rosborough McMillan

FOR THE RESPONDENT:

John McCandless

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-8
OAL DOCKET NO. CCC 1207-84
LICENSE NO. 22925-21

APPLICATION OF GARNEL D. MILLER :
FOR RENEWAL OF HIS CASINO :
EMPLOYEE LICENSE :

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of December 12, 1984,

IT IS on this 22nd day of May 1985, ORDERED that the initial decision is modified as follows:

> Although identified as an issue in the prehearing conference order, the initial decision does not contain any finding concerning the applicant's good character, honesty and integrity pursuant. Based upon the reasons noted by the Administrative Law Judge in his finding favorable to the applicant on the issue of rehabilitation pursuant to N.J.S.A. 5:12-90(h), we find that the applicant currently possesses the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the application of Garnel D. Miller is granted based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that copies of this final order be served upon the applicant, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1207-84

AGENCY DKT. NO. 84-EA-8

GARNEL D. MILLER,
Petitioner,
v.
STATE OF NEW JERSEY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Garnel D. Miller, petitioner, pro se

Ralph Fusco, Deputy Attorney General, on behalf of respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: August 8, 1984 Decided: September 14, 1984

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of a complaint filed by respondent with the Casino Control Commission objecting to the renewal of petitioner's license as a casino employee, pursuant to N.J.S.A. 5:12-1 et seq. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The basic facts are undisputed. Petitioner was first licensed as a casino employee on February 4, 1981. He then obtained employment at Harrah's Marina Hotel and Casino as a Roulette Dealer. On June 30, 1981, he was arrested in Elizabeth for possession of heroin in violation of N.J.S.A. 24:21-20(a)1 and possession of marijuana,

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under 25 grams, in violation of N.J.S.A. 24:21-20(a)4. He was indicted for possession of heroin and eventually pled guilty to both offenses. A bench warrant was issued in the case when he failed to make a scheduled appearance. He was sentenced to three years' probation, fined a total of $600 and was required to pay $50 to the Violent Crimes Compensation Board. He currently reports to a probation officer in Atlantic County as a result of this offense. On October 2, 1981, petitioner was arrested at Harrah's for possession of a controlled dangerous substance, marijuana under 25 grams, in violation of N.J.S.A. 24:21-20(a)4. He received a six-month conditional discharge subject to his supplying monthly medical reports. He has satisfied this condition. On March 4, 1983, petitioner was arrested in Egg Harbor for possession of marijuana, under 25 grams, in violation of N.J.S.A. 24:21-20(a)4 and possession of hashish under 5 grams. He pled guilty and was fined $75, costs, and was required to remit $25 to the Violent Crimes Compensation Board.

In October 1981, petitioner was fired from his position at Harrah's as a result of his arrest there. In August 1982, he obtained employment as a Roulette Dealer at Playboy where he still works.

Respondent believes that the three arrests and convictions undermine petitioner's efforts to establish by clear and convincing evidence that he continues to maintain the qualities of good character, honesty and integrity, and further that he has not shown rehabilitation. N.J.S.A. 5:12-90.

Petitioner testified in his own behalf. He is 26 years old and grew up in the Atlantic City area. He graduated from Pleasantville High School and attended Upsala College for one year and Atlantic City Community College for one and one-half years. He has a three-year-old daughter.

Petitioner acknowledged his three crimes. He pointed out that none of them was directed at anyone other than himself but that in any event this was all behind him. He submitted a number of letters attesting to his good character. He also submitted two employee evaluations. The first is from Harrah's and covers a period of approximately five months from the time he was hired in February 1981 until June 1981. It is a positive evaluation which characterizes petitioner as:

> a good worker, not intimidated at all, shows a lot of potential as a dealer. He is easy tempered and cooperative in dealing with others. He is polite and informative to customers, and I believe everyone is pleased to have him work with us, he is a smooth dealer and generally nice to be around.

A second report of evaluation from Playboy, dated January 30, 1984, approximately one and one-half years after he was hired was also placed in evidence. On this form skills and weaknesses are broken down into various categories and given a numerical value. It appears from this that overall petitioner was at least an average if not better than average employee who showed strengths in areas such as customer courtesy, attitude and attendance at work. He received no unacceptable scores on the evaluation.

Petitioner believed that based on these reports, his references, and his own testimony that he has established his rehabilitation, and thus his good character.

This is the substance of the record.

The case presents a close question. Petitioner must meet his burden by clear and convincing evidence. Certainly these three convictions over a relatively short period of time create some underlying doubt, which argues for denial. In re Boardwalk Regency Casino Application, 180 N.J. Super. 324, 339 (App. Div. 1981). Nevertheless, petitioner was a credible and articulate witness. He is still young and I accept his testimony that these mistakes are behind him. He is completing his probation period. He is a family man and appears to take his work seriously. To deprive him of this opportunity at this point would no doubt be a great discouragement and might turn these small mistakes into larger ones. In addition to his own testimony, the record presents enough positive information to conclude that these prior incidents were the aberations of youth in an otherwise well-directed individual.

Based on the foregoing, it is my **CONCLUSION** that petitioner has established his rehabilitation. It is **ORDERED** that his license be renewed.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9/14/84
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

September 14, 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 18 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE

FOR THE PETITIONER:

P-1 Letter to Honorable Judge Cuddie E. Davidson, Jr. from John Butt, dated February 15, 1984

P-2

P-3 Letter to Honorable Cuddie E. Davidson, Jr. from Lyndon R. Stockton, dated February 16, 1984

P-4 Letter to Your Honor from Antoinette J. Moore, dated February 14, 1984

P-5 Letter to whom it may concern from Dorothia Dorsey, dated February 14, 1984

P-6 Letter To May Concern from Cheryl A. Parrott, dated February 13, 1984

P-7 Performance Appraisal: Ratings from Harrah's Marina Hotel Casino for Garnell [sic] Miller

P-8 Playboy Hotel & Casino Dealer Evaluation Form for Garnel Miller, dated January 30, 1984

P-9 Letter to Dear Sir from John H. Jennings, dated July 30, 1984

FOR THE RESPONDENT:

R-1 Indictment No. 1854 for Garnel D. Miller filed August 21, 1981

R-2 Atlantic City Municipal Court Record of Garnel Miller, dated November 25, 1981

R-3 Summons for the Egg Harbor Twp. Court for Garnel Miller, dated September 8, 1983

JOINT EXHIBIT:

J-1 Letter from Municipal Court of Atlantic County to Ralph L. Fusco, signed by Helen A. Jones, Court Clerk, dated March 21, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 49393-21
AGENCY DOCKET NO. 84-EA-90
OAL DOCKET NO. CCC 4458-84

IN THE MATTER OF THE APPLICATION
OF DURRELL W. MOYER
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 27, 1984, recommending that the application of Durrell W. Moyer for a casino employee license be granted; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 9, 1985, to affirm and adopt the said Initial Decision and to grant the application,

IT IS on this 14th day of JANUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the application of Durrell W. Moyer for a casino employee license be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Durrell W. Moyer and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4458-84

AGENCY DKT. NO. 84-EA-90

DURRELL W. MOYER,

Applicant,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Daniel L. Cohen, Esq., for the applicant (Krantz & Cohen, attorneys)

Joanne Cocchiola, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 12, 1984 Decided: November 21, 1984

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Durrell W. Moyer, applicant, to the Casino Control Commission (Commission) for licensure as a casino employee (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure by reason of the applicant's criminal record history and its contention that the applicant lacked the requisite good character, honesty and integrity. Although the applicant conceded his criminal record history, he contended that he has satisfied the rehabilitation criteria of N.J.S.A. 5:12-90h.

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PROCEDURAL HISTORY

Mr. Moyer filed his Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on October 12, 1983. By letter, the Commission advised the applicant that, based upon a report received from the Division, dated May 3, 1984, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed with the Commission on June 7, 1984, the applicant requested a hearing. On June 18, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 10, 1984. The matter was heard and the record was closed on October 12, 1984.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Moyer is 27 years of age. He is a 1974 graduate of Boyertown High School, Boyertown, Pennsylvania (P-7).

From May 1973 to September 1978, the applicant was employed as a retail clerk by Acme Markets in Boyertown and Pottstown, Pennsylvania.

From September 1978 to September 1979, the applicant was employed as a material handler by the Wagner Division of McGraw-Edison Co., in Boyertown, Pennsylvania. He was dismissed from this employment by reason of his arrest.

On September 13, 1978, the applicant was arrested by the Pennsylvania State Police and was charged with possession of methamphetamines (comparable to N.J.S.A. 24:21-20a(1)) and sale of drugs (comparable to N.J.S.A. 24:21-19a(1)). On February 20, 1979, a criminal information was filed against the applicant, which charged him with possession of methamphetamines (comparable to N.J.S.A. 24:21-20a(1)), possession of methamphetamines with intent to deliver (comparable to N.J.S.A. 24:21-19a(1)), and delivery of a controlled dangerous substance (methamphetamines) (comparable to N.J.S.A. 24:21-19a(1)) (R-1). On May 1, 1979, the applicant pled guilty to the second count, possession of a controlled dangerous substance with intent to deliver (methamphetamines). The remaining two counts were dismissed. The applicant was sentenced to from ten days

to twenty-three months, was levied a fine of $500, was ordered to pay costs of prosecution and make restitution in the amount of $90 (R-2). The applicant served nine days over five separate weekends. Following his release from prison, the applicant served the remainder of his sentence on parole. He completed satisfactorily his parole on April 1, 1981 (P-3).

The applicant described the circumstances underlying the incident. Although not a drug user, he decided to sell methamphetamine in order to obtain money. A cousin of the applicant arranged for him to purchase and sell the drugs. The cousin was under investigation by the police for drug activity. On one occasion the applicant sold 1.63 grams of methamphetamine to Pennsylvania State Trooper Francis Makos for $90. The trooper attempted to purchase a larger quantity of drugs from the applicant, but the applicant refused (P-2). No drug rehabilitation conditions were imposed upon the applicant because he was not a drug user. The applicant was 21 years of age at the time of the incident. He disclosed the incident in response to question number 16 on his PHDF-2A.

From September 1979 to October 1983, the applicant was employed as a painter by Gary Weller, Pottstown, Pennsylvania.

On February 9, 1984, the applicant successfully completed dealer school at CSI, Inc.

In April 1984, the applicant relocated to Brigantine, New Jersey, for the purpose of pursuing a career in the casino industry.

From April 1984 to the present, the applicant has been employed by the Atlantic City Thriftway Supermarket (P-1). He was employed as a night stock clerk for a period of one month. He currently is the number two person in the produce section. His employment has been satisfactory in all respects.

The applicant's father is deceased. The applicant currently sends money to his mother and grandmother.

The applicant has committed no further violations of the criminal laws. Trooper Makos, the arresting officer, stated in a letter, dated May 31, 1984, that he is

still involved in narcotics investigations and that the applicant's name has not appeared during any subsequent investigations.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the applicant's character, honesty and integrity.

The applicant produced five letters in support of his application. The first was from Robert J. McCormick, store manager of the Atlantic City Thriftway, which states that the applicant is a reliable, conscientious and hardworking employee (P-1).

The second letter is from Mary V. Manley and William F. Manley, Jr., a grade school teacher and lumber yard supervisor, respectively, and close personal friends of the applicant since 1969 (P-4). Mr. and Mrs. Manley stated that they had sufficient trust in the applicant to permit him to care for their children and grandchildren.

Carol A. Schneider, a registered nurse employed at the New Lisbon State School, stated that she has known the applicant for a period of two years and believes him to be a loyal and dependable friend and to exhibit positive direction toward establishing a career (P-5).

The applicant last submitted a letter from Wendy J. Roncoroni, rehabilitation plan coordinator at the New Lisbon State School (P-6). The applicant currently dates Ms. Roncoroni. Ms. Roncoroni stated that the applicant is a very honest and forthright person and displays integrity in all aspects of his life.

The applicant also testified on his own behalf. He described the circumstances underlying his criminal misconduct. He also stated that he would not repeat his misconduct because he was aware of the consequences, including a substantial period of imprisonment. Further, the applicant desires to have a career in the casino industry. He has sought this career because his current employment is insufficient.

After consideration of the entire record in this matter, I further **FIND** that:

1. Close friends, acquaintances and employment supervisors are of the opinion that the applicant is currently a person of good character, honesty and integrity.

2. There is little, if any, likelihood that the applicant will repeat his prior misconduct.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(3)

Section 86c(3) of the Casino Control Act (Act) provides for the disqualification from licensure of a person who has been convicted of a high misdemeanor under N.J.S.A. 24:21-19 et seq.

There was no dispute that the applicant was convicted of possession with intent to deliver methamphetamines (comparable to N.J.S.A. 24:21-19a(1)), which is a high misdemeanor.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, a violation of N.J.S.A. 5:12-86c(3), which mandates disqualification from licensure.

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, the applicant seeks licensure as a dealer in a casino. In such a position he would have substantial contact with patrons and would be involved completely in gaming activities.

Second, the applicant's misconduct involved the sale of narcotics and, as such, is very serious in nature.

Third, the applicant became involved in the sale of narcotics for the purpose of making money. Further, the applicant was enticed into the activity by his cousin, who was under investigation for narcotics activity and who wanted to divert attention from himself. Also, the applicant committed a one-time sale of a small amount of drugs to an undercover officer. The applicant rejected a request by the officer to purchase additional and larger quantities of drugs.

Fourth, the incident occurred on July 17, 1978, six years ago.

Fifth, the applicant was 21 years of age at the time of the incident. The applicant's misconduct can be attributed, in part, to his youth.

Sixth, the applicant has committed no other violations of the criminal laws.

Seventh, there were no social conditions which contributed to the offense.

Eighth, the applicant has exhibited substantial rehabilitative efforts. He pled guilty and served his sentence satisfactorily. Also, prior to his arrest he rejected additional opportunities for misconduct. He has not repeated his misconduct, and has established that his misconduct was an aberration in his life and that it is unlikely that it will ever recur. The applicant has also established a very positive employment record. Further, he has obtained additional vocational training in order to enhance his employment opportunities in the casino industry. I am persuaded that the applicant has met his statutory burden to establish his rehabilitation.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Moyer was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

There is no dispute that the applicant's prior misconduct was serious. However, the applicant has acknowledged full responsibility for his actions. Also, the applicant's misconduct is mitigated by the facts that he refused to repeat his misconduct prior to his arrest and because his offense was isolated. Further, the applicant has

affirmatively demonstrated his complete rehabilitation. Also, the applicant has earned a positive employment record and is sincerely pursuing a more rewarding career within the casino industry. The applicant presents no risk to the public or to the integrity of casino gaming in this state. An examination of the "whole man" clearly and convincingly establishes that Mr. Moyer is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Durrell W. Moyer for licensure as a casino employee be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 21, 1984
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

November 27, 1984
DATE

Bernadette P. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 30 1984
DATE

Ronald L. Parker/sbo
OFFICE OF ADMINISTRATIVE LAW

ml/E

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Letter from Robert J. McCormick, October 9, 1984

P-2 Letter to Durrell Moyer from Trooper Francis S. Makos, May 31, 1984

P-3 Letter from Patrick J. McCauley, July 11, 1984

P-4 Letter from Mary V. Manley and William F. Manley, Jr., July 27, 1984

P-5 Letter from Carol A. Schneider, August 3, 1984

P-6 Letter from Wendy J. Roncoroni, August 6, 1984

P-7 Personal History Disclosure Form - 2A, filed October 12, 1983, Durrell W. Moyer (24 pages)

R-1 Commonwealth of Pennsylvania v. Durrell Moyer, Criminal Action Number 78100101-0, Criminal Information, filed February 20, 1979 (3 pages)

R-2 Commonwealth of Pennsylvania v. Durrell Moyer, in the Court of Common Pleas, Berks County, Pennsylvania - Criminal Division, Criminal Action Number 78100101-0, sentence, May 1, 1979

WITNESS LIST

FOR THE APPLICANT:

Durrell W. Moyer

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-EA-105
OAL DOCKET NO. CCC 1747-83
APPLICATION NO. 24182-22

IN THE MATTER OF THE APPLICATION
OF SHANN A. MUHAMMAD
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 22, 1983, recommending that the casino employee license application of Shann A. Muhammad be denied; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on January 4, 1984, to reject the recommendation contained in the Initial Decision of the Office of Administrative Law and to grant the application,

IT IS on this 24th day of JANUARY 1985, ORDERED that the recommendation contained in the Initial Decision of the Office of Administrative Law to deny the application at issue be and hereby is rejected by the Commission for the following reasons:

1. The Administrative Law Judge found that the applicant's "1976 conviction of the offense of entering without breaking, in violation of N.J.S.A. 2A:94-1 is an automatic disqualifier from licensure under 86(c)(1) of the act...." [Initial Decision at 6].

The applicant's offense correlates to burglary, contrary to N.J.S.A. 2C:18-2. Pursuant to section 86(c)(1), a violation of N.J.S.A. 2C:18-2 is a statutory disqualifying offense if it constitutes a crime of the second degree. Upon review of the record the Commission finds that the applicant's conviction was for a third degree offense and therefor not a statutory disqualifier pursuant to N.J.S.A. 5:12-86(c)(1). Further, the Commission finds no basis in the record to conclude that the 1976 conviction for entering without breaking constitutes an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4).

2. The Administrative Law Judge further found that "...the petitioner is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86(b)...." [Initial Decision at 6].

Through his answers to questions 45, 46, and 49 of the personal history disclosure form, the Commission finds that Mr. Muhammad revealed, albeit inarticulately, a substantial portion of his criminal record. The Commission finds the applicant's failure to disclose his remaining criminal record excusable considering: (a) his disclosure of his most serious and most recent criminal offense, i.e., his 1977 conviction for the possession and distribution of a controlled dangerous substance; (b) his disclosure of his record for an offense committed when he was a juvenile; and (c) his candid and sincere testimony at the administrative hearing.

3. Based upon the entire record created at the administrative hearing, particularly with reference to the applicant's testimony concerning his rejection of his previous lifestyle and the passage of seven years without any further involvement with the criminal justice system, the Commission finds that the applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence as required by N.J.S.A. 5:12-90(b).

IT IS FURTHER ORDERED that the application of Shann A. Muhammad for a casino employee license be and hereby is granted; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Shann A. Muhammad and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1747-83

AGENCY DKT. NO. 82-EA-105

SHANN A. MUHAMMAD,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Shann A. Muhammad, Pro Se

William E. Mountford, Jr., Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 6, 1983 Decided: November 21, 1983

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Shann A. Muhammad to the Casino Control Commission for a license permitting him to work in a casino as a maintenance and cleaning employee. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the

meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the act.

2. Whether the petitioner, with specific reference to seven arrests between 1971 and 1976, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

3. Whether the petitioner, with specific reference to his 1976 conviction of the offense of entering without breaking, in violation of N.J.S.A. 2A:94-1, and his 1977 conviction of possession and distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1), has been convicted of an offense which is an enumerated disqualifier from licensure, within the meaning of sections 86c(1) and (3) of the act.

4. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to section 86c of the act, has demonstrated his rehabilitation, within the meaning of section 90h of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objections to the licensure of the petitioner by letter report to the Casino Control Commission, dated May 14, 1982. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on March 9, 1983, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a 30-year-old resident of Atlantic City, New Jersey, who lives with his widowed mother and who supports and cares for his six children. He has been employed at the Claridge Hotel and Casino as a storeroom clerk under a temporary license for approximately two years. The petitioner is a Muslim whose name prior to his conversion

was Sidney Marshall. The petitioner considered it to be a privilege to appear at the hearing to clear his name and to uphold his dignity as a human being.

The petitioner does not deny his criminal record. As Sidney Marshall, the petitioner was arrested on seven occasions. He was first arrested on November 25, 1971, for breaking and entering, N.J.S.A. 2A:94-1, and attempted larceny, N.J.S.A. 2A:119-2, by the Atlantic City Police Department (Exhibit R-1). On May 30, 1972, the petitioner received a suspended sentence to the Yardville Correction Center. This arrest was not disclosed on the petitioner's Personal History Disclosure Form.

On August 4, 1972, the petitioner was arrested by the Atlantic City Police Department for possession of a controlled dangerous substance, N.J.S.A. 24:21-20a(1). The Atlantic County Grand Jury no billed the matter and the petitioner was found guilty of the downgraded disorderly persons charge of N.J.S.A. 24:21-20b. For this offense, the petitioner was fined $200 (Exhibits R-2 and R-3). The petitioner failed to disclose this arrest and conviction on his Personal History Disclosure Form.

On February 17, 1973, the petitioner was arrested for molesting and interfering with persons, N.J.S.A. 2A:170-29, by the Atlantic City Police. On March 20, 1973, the petitioner was found guilty in the municipal court and fined $200 (Exhibit R-1). The petitioner failed to disclose this arrest on his Personal History Disclosure Form.

On June 19, 1974, the petitioner was arrested in Atlantic City for assault and battery, N.J.S.A. 2A:170-26. On September 6, 1974, the petitioner was found not guilty (Exhibit R-5). The petitioner failed to disclose this arrest on his Personal History Disclosure Form.

On May 17, 1975, the petitioner was arrested for attempted robbery, N.J.S.A. 2A:85-5, by the Atlantic City Police Department. According to the credible testimony of the petitioner, he had been in a desperate emotional and financial situation and he took it upon himself to attempt to rob a bank. The petitioner had a note containing an unlawful demand for money which he gave to a customer to hand to a teller. Without going through with the robbery, the petitioner turned and left the bank (Exhibit R-6). Following his indictment, the petitioner pled guilty to the charge of entering without breaking, N.J.S.A. 2A:94-1, and the attempted robbery charge was dismissed (Exhibit R-7). The petitioner was sentenced to the Atlantic County Jail for a period of 30 days, with credit given for

one day served. The petitioner failed to disclose this arrest on his Personal History Disclosure Form.

On June 1, 1976, the petitioner was a passenger in a vehicle stopped by the New Jersey State Police on the New Jersey Turnpike. The petitioner was subsequently charged with use of a controlled dangerous substance, N.J.S.A. 24:21-20b, and upon his plea of guilty, he was given a six-month conditional discharge (Exhibit R-8). The petitioner failed to disclose this arrest on his Personal History Disclosure Form.

On August 20, 1976, the Atlantic City Police executed a search warrant on the petitioner's home and seized amounts of heroin, cocaine and marijuana, as well as currency in excess of $7,000 (Exhibit R-10). The petitioner was indicted by the Atlantic County Grand Jury for unlawfully and knowingly possessing the controlled dangerous substance heroin, N.J.S.A. 24:21-20a(1) and unlawfully distributing heroin, N.J.S.A. 24:21-19a(1). On July 2, 1977, the petitioner pled guilty to the charge of distribution of a controlled dangerous substance and possession of a controlled dangerous substance and was sentenced to an indeterminate term at Yardville Correction Center (Exhibit R-11). The petitioner disclosed this arrest on his Personal History Disclosure Form.

The petitioner testified that he was jailed for approximately eight or nine months. During that time, the petitioner participated in group therapy and became familiar with the Muslim religion. When he became a Muslim, the petitioner took on the name of Shann Muhammad. Subsequently, this became the petitioner's legal name. Since his conversion, the petitioner has experienced no further arrests. With eloquence and dignity, the petitioner described his former self, Sidney Marshall, as a person who was born in ignorance and who had no sense of direction. The petitioner, Shann Muhammad, has a new vision on life as a person who upholds his family and personal integrity, and who cares for his fellow man. As part of his assumption of responsibility as a human being, the petitioner has ended his use of illegal drugs. As an example of his concern for his fellow man, a letter from the Christian charitable organization World Concern thanking the petitioner for his contribution was admitted into evidence as Exhibit P-1.

Testifying on behalf of the petitioner was Michael Johnson. According to Mr. Johnson, he would not walk on the same side of the street with the petitioner when the petitioner was known as Sidney Marshall. He has known the petitioner since he was

about nine years old and he has seen a remarkable change in the petitioner. He first observed this change for the better in the petitioner approximately three years ago.

As noted above, the petitioner failed to disclose on his Personal History Disclosure Form six of his seven arrests. New Jersey State Police Detective Stephen Michalow testified that he investigated the petitioner's application for licensure and that he spoke to the petitioner by telephone on January 4, 1982. At that time, the detective asked the petitioner why he had not disclosed any but his last arrest on his Personal History Disclosure Form. It was the testimony of the detective that the petitioner stated he had forgotten about the other arrests and that he did not really understand the question. When confronted with the undisclosed arrests, the petitioner stated that he did not remember many of their details.

Testifying on his own behalf, the petitioner acknowledged that "when I signed that application I know I told some things that might not be true." According to the petitioner, one reason that he did this was because he needed work. The petitioner also stated that he became frustrated trying to remember what he had done and how he had done it and why he had done it and when he had done it, and that he had not failed to put down all of the information out of trying to get away with anything. The petitioner further stated, "I did it . . . because I had to do what was needed at the time. I didn't know it would come to this and I didn't know - maybe perhaps be this serious." The petitioner's explanation offered at the hearing for his failure to disclose six of his seven arrests was candid and sincere, and entirely worthy of credit.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c, the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction of an enumerated statutory disqualifier from licensure.

The petitioner's 1976 conviction of the offense of entering without breaking, in violation of N.J.S.A. 2A:94-1 is an automatic disqualifier from licensure under section 86c(1) of the act. His 1977 conviction of possession and distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1) is also an automatic disqualifier from licensure under section 86c(3) of the act. Nevertheless, an applicant for licensure shall not be denied a casino employee license on the basis of a conviction of a disqualifying offense, provided that he has affirmatively demonstrated his rehabilitation, pursuant to section 90h of the act.

The relevant and credible evidence in the record would support the conclusion that the petitioner has affirmatively demonstrated that he possesses the degree of good character, honesty and integrity requisite for licensure as a casino employee and that he has affirmatively demonstrated his rehabilitation, despite his conviction of offenses which would otherwise be automatic disqualifiers from licensure, were it not for his failure to disclose his complete record of arrests and convictions on his Personal History Disclosure Form. This failure to disclose resulted in part from the petitioner's need to have a job. By implication, the petitioner felt he would not obtain a job if he disclosed his entire record. Thus, the petitioner's failure to disclose resulted from his conscious disregard of the request for his arrest and conviction record, rather than from ignorance or inadvertence. Accordingly, I must **CONCLUDE** that the petitioner is disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

The petitioner's candor and sincerity were apparent throughout the hearing. In particular, the petitioner convincingly communicated his feelings of self-worth and personal integrity. Were it not for his intentional failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b, an initial decision granting the petitioner's application for licensure would have been entered.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Shann A. Muhammad for licensure as a casino employee be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in

this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 21, 1983
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

22 NOV 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 29, 1983
DATE

Ronald L. Rukenbrod
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Letter from World Concern, dated September 14, 1983

FOR THE RESPONDENT:

R-1 Arrest Record
R-2 Arrest Report, dated August 4, 1972
R-3 Letter, dated May 2, 1983
R-4 Disposition letter, dated July 26, 1973
R-5 Police Report, dated June 19, 1974
R-6 Police Report, dated March 27, 1975
R-7 Motion and Order to Dismiss
R-8 Police Report, dated June 15, 1976
R-9 Police Report, dated June 25, 1976
R-10 Police Report, dated August 20, 1976
R-11 Motion and Order to Dismiss

WITNESSES

FOR THE PETITIONER:

Shann A. Muhammad
Michael Johnson

FOR THE RESPONDENT:

Stephen Michalow

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-269
OAL DOCKET NO. CCC 6919-84
REGISTRATION NO. 42899-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	FINAL ORDER
REINA MUNERA, a/k/a REINA FIGUEROA,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law which was filed with the Commission on February 1, 1985, recommending that the complaint, Docket No. 84-269, filed by the Division of Gaming Enforcement seeking revocation of the respondent's casino hotel employee registration be dismissed; and no exceptions or objections having been filed by either party; and the Commission having considered the entire record in this matter and having resolved at its public meeting of March 6, 1985, for good cause shown, to affirm and adopt the initial decision and dismiss the complaint against the respondent,

IT IS on this 14th day of March 1985, ORDERED that the initial decision filed by the Office of Administrative Law be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement be and hereby is dismissed based upon the reasons set forth in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Reina Munera, a/k/a Reina Figueroa, the Office of Administrative Law and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6919-84

AGENCY DKT. NO. 84-269

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

REINA MUNERA,

Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Daniel L. Cohen, Esq., for respondent (Krantz & Cohen, attorneys)

Record Closed: December 17, 1984 Decided: January 31, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on August 21, 1984, seeking judgment revoking the respondent's casino hotel employee registration, or some other appropriate sanction, pursuant to sections 86, 91 and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The issue to be determined in this matter is as follows:

> Whether the respondent, with specific reference to social security numbers submitted to the Casino Control Commission, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria, within the meaning of sections 86b and 91b of the Casino Control Act.

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At the prehearing conference held in this matter on October 25, 1984, an additional issue was identified which concerned the allegation of the Division of Gaming Enforcement that the respondent had participated in a marriage fraud scheme. At the hearing in this matter, it was agreed between counsel for the parties that the Division of Gaming Enforcement no longer wished to pursue this additional allegation. Therefore, the hearing was limited to the issue of whether the petitioner had supplied a false social security number to the Casino Control Commission.

PROCEDURAL HISTORY

On September 5, 1984, the respondent filed with the Casino Control Commission her request for a hearing on the complaint of the Division of Gaming Enforcement. On September 12, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The respondent is a 50 year old resident of Atlantic City, New Jersey. She came to the United States from Colombia, South America, in May 1982. The respondent's ability to speak and write the English language is very limited and it was necessary to utilize a translator at the hearing.

The respondent has been employed by the Golden Nugget Hotel and Casino since July 10, 1982, as a kitchen services attendant. This employment is permitted pursuant to Casino Hotel Employee Registration No. 42899-40, which was issued by the Casino Control Commission on July 13, 1982. It is undisputed that the respondent's supervisors at the Golden Nugget consider her to be an outstanding employee with an excellent attitude (Exhibits R-1 to R-4). A letter from the respondent's pastor, Father James Hally, attests to the reliability and high moral character of the respondent (Exhibit R-5). Letters from several of the respondent's neighbors which attest to her honesty were admitted into evidence as Exhibits R-6 through R-9.

Agent John Zamrock testified on behalf of the Division of Gaming Enforcement that he conducted an investigation of the respondent. Specifically, his investigation included determining whether the social security number which the respondent had recorded on her personal history disclosure form 4 (Exhibit P-2) had been validly issued to the respondent by the Social Security Administration. The social security number provided to the Casino Control Commission was 164-78-9235.

Using the Applications Numerical Reference System (Exhibit P-1), Agent Zamrock determined that the first three digits, 164, represented the area number for a Pennsylvania resident at the time of issuance of the social security number. Using the same system, Agent Zamrock determined that the next two digits in the social security number, 78, represent a group number which has not, as yet, been issued for Pennsylvania's 164 area number. Thus, Agent Zamrock determined that the social security number given by the respondent to the Casino Control Commission on her personal history disclosure form has not been validly issued by the Social Security Administration.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns whether the respondent intentionally supplied a false social security number to the Casino Control Commission. Testifying on her own behalf, with the aid of the translator, the respondent explained how she obtained the social security number 164-78-9235, which she recorded on her personal history disclosure form filed with the Casino Control Commission. According to the respondent, when she came to the United States in May 1982, she lived in New York with a friend who had been in the United States for about eighteen years. The friend told the respondent that in order to obtain employment in the United States, she would need to apply for a social security number, which would cost $60.00.

It was the testimony of the respondent that a telephone call was made to an individual who came to the friend's house after three or four days and presented the respondent with a social security card (Exhibit R-10) bearing the number 164-78-9235, for which the respondent paid $60.00. Acknowledging that this was the social security number which she used when applying for her casino hotel employee registration, the respondent explained that she did not learn that the number was not valid until she had

been working at the Golden Nugget Casino Hotel for about one year. According to the respondent, she was informed by the United States Immigration and Naturalization Service that the number was not valid, and she was told to reapply for a social security number. Approximately eight months ago, the respondent was issued the social security number 144-76-8187, and she has so advised her employer.

The respondent's testimony was straightforward and sincere. In particular, her explanation of reliance on a friend's advice when she had only been in the United States for fifteen days is entirely credible. Also credible is the respondent's explanation that she did not learn that she had used an invalid social security number until well after she had submitted her personal history disclosure form, pursuant to her application for a casino hotel employee registration. Accordingly, I additionally **FIND** that the respondent did not intentionally supply a false social security number to the Casino Control Commission.

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to sections 91b and 86b of the Casino Control Act, the Commission may revoke the registration of a casino hotel employee registrant on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. In this matter, it is undisputed that the respondent supplied a false social security number to the Casino Control Commission when she submitted her personal history disclosure form. However, I have found that the respondent did not know that the social security number was not valid until about a year later. Thus, I **CONCLUDE** that the respondent's supplying of false information to the Casino Control Commission resulted from her ignorance, rather than a conscious intent to mislead the Commission. Having so concluded, it is unnecessary to determine whether or not a social security number is a material fact

pertaining to the qualification criteria. Therefore, I further **CONCLUDE** that the Division of Gaming Enforcement has failed to sustain its burden of establishing grounds for the revocation of the respondent's casino hotel employee registration, or some other appropriate sanction.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against **REINA MUNERA** be and hereby is dismissed.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 31, 1985
DATE

Joseph J. Fidler
JOSEPH J. FIDLER, ALJ

Receipt Acknowledged:

February 1, 1985
DATE

Mary Ann Borczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 05 1985
DATE

Ronald L. Parker/pre
OFFICE OF ADMINISTRATIVE LAW

ij

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INVENTORY OF EXHIBITS

For the petitioner:

P-1 Social Security Applications Numerical Reference System

P-2 Personal History Disclosure Form

For the respondent:

R-1 Letter, dated November 12, 1984

R-1 Letter, dated November 15, 1984

R-3 Letter, dated December 3, 1984

R-4+ Letter, dated October 14, 1984

R-5 Letter, dated November 11, 1984

R-6 Letter

R-6 Letter

R-8 Letter

R-9 Letter

R-10 Social Security Number Card

R-11 Affidavit, dated November 21, 1984

WITNESSES

For the petitioner:

John Zamrock

For the respondent:

Juan Pagan

Reina Munera

Translator:

James Miranda

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-92
OAL DOCKET NO. CCC 5983-84
LICENSE NO. 15528-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ROBERT J. NAPOLIELLO,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of May 15, 1985,

IT IS on this 16th day of MAY 1985, ORDERED that the initial decision in this matter is affirmed; and

IT IS FURTHER ORDERED that the complaint against Robert J. Napoliello is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Robert J. Napoliello, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5983-84

AGENCY DKT. NO. 84-92

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ROBERT J. NAPOLIELLO,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Mark Roddy, Esq., for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: February 13, 1985 Decided: March 29, 1985

BEFORE **VALERIE H. ARMSTRONG**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint on March 28, 1984, seeking revocation of respondent's casino employee license, alleging that on or about March 1, 1984, he was arrested and charged with swindling and cheating at casino gaming, in violation of N.J.S.A. 5:12-113, in that on or about February 22, 1984, during the course of his employment at the Sands Hotel/Casino (Sands), he cheated in a game of craps by making improper payoffs. On April 5, 1984, respondent requested a hearing. Pursuant to N.J.S.A. 5:12-86d, the hearing was deferred until disposition of the charges pending in the Atlantic City Municipal Court.

On April 16, 1984, the Casino Control Commission (Commission) entered an order temporarily suspending respondent's casino employee license pending disposition of the municipal court complaint or until further order of the Commission. On June 12, 1984, Julian Wilsey, Deputy Attorney General, Chief, Casino Prosecution Section, approved an administrative dismissal of the municipal court complaint filed against respondent (J-2). On June 15, 1984, respondent's attorney moved to dismiss the Division's complaint, and sought an order reinstating respondent's license. On August 7, 1984, the suspension order was vacated. However, respondent's motion to dismiss the Division's complaint was denied. The matter was then transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference resulted in the entry of a prehearing order on October 3, 1984, which defined the following issues to be addressed at the hearing:

1. Since respondent was charged with a violation of N.J.S.A. 5:12-113, can he demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity, required by N.J.S.A. 5:12-90b as incorporated from section 89b(2) of the Casino Control Act (Act)?

2. Does the alleged violation of N.J.S.A. 5:12-113 render respondent's licensure inimical to the Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4)?

3. Notwithstanding that respondent was not convicted of a violation of N.J.S.A. 5:12-113, should he be disqualified from licensure pursuant to N.J.S.A. 5:12-86g, if the Division can demonstrate by the preponderance of the evidence that he did violate section 5:12-113 of the Act?

4. If the Division meets its burden of proof in establishing that respondent has violated N.J.S.A. 5:12-113, can respondent demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90h?

The hearing was held on February 5, 1985 in Pleasantville, New Jersey. At the hearing, the parties agreed to an Order of Sequestration barring all witnesses from the hearing room, other than respondent and the testifying witness. In order to permit the filing of post-hearing briefs, the record remained open until February 13, 1985.

FACTUAL FINDINGS

Petitioner is 43 years old and holds a floorperson license in craps. On the evening of February 22, 1984 he was flooring craps table 8 at the Sands. As a result of certain incidents which occurred during that evening at craps table 8, respondent was arrested and charged on March 1, 1984 with violating N.J.S.A. 5:12-113 (P-1). On June 12, 1984, the charges against respondent were administratively dismissed pursuant to R. 3:25-1 (J-2). While the prosecutor's background report and reasons for administrative dismissal were introduced into evidence as part of exhibit J-2, I specifically note that I make no factual findings based upon the contents set forth in the report. There was no evidence introduced as to the source of the background information contained in the prosecutor's report other than a minute summary of a statement given by respondent to a person not identified in the background report, as well as summaries of statements also given to an unidentified person by Donald Cross and Albert Huber, neither of whom testified at this hearing. I **FIND** that the background report is insufficient and unreliable without further evidence, for the purpose of making factual findings for this hearing.

As a result of the March 1, 1984 arrest, respondent's license was suspended by the Commission in April 1984. Notwithstanding that the suspension order was vacated on August 7, 1984, respondent has been unemployed for one year, resulting in extreme financial hardship. Respondent had been employed by the casino industry (although it was not revealed where or in what position) for the past 11 years.

On the evening of February 22, 1984, the following persons worked or supervised at craps table 8:

1. Robert Napoliello - floorperson
2. Albert Huber - boxman
3. Donald Cross - stickman
4. Charles Barksdale - stickman

5. Howard Grasso - dealer
6. Anthony Zito - relief floorperson
7. Bill Carr - dealer

(During the evening, some of the above persons alternated their positions from dealer to stickman and vice versa).

At 10:00 p.m. respondent took his scheduled break in the "break area" off the casino floor. The break area is separate from the casino floor, providing no conceivable way for a person in the break area to communicate with any individuals on the casino floor. During respondent's break from 10 p.m. until 10:30 p.m., he was relieved from his duties by Anthony Zito. During his break, respondent remained in the break area and did not have any contact or communication with any persons working at craps table 8.

It is undisputed by both parties that at 10:07 p.m. and 10:11 p.m., two unidentified white females received illegal payoffs through various persons working at craps table 8, in violation of Section 113 of the Act. The surveillance tape of these payoffs which totalled $28 was introduced into evidence as J-1.

The two unidentified white females had come to craps table 8 sometime prior to 10 p.m. when there was no action at the table. They each cashed in a $20 bill to play. They were novice players and wanted assistance in learning the game. Respondent, Cross and Barksdale showed the women when and where to place the money during the game.

Prior to 10 p.m., Barksdale (an employee of the Sands for five years) was performing stick. Barksdale claims that respondent instructed the dealer to push back a bet as a late bet for the two women. Barksdale claims that the bet was not late (respondent claims the bet was late), and that respondent's instructions were improper. Barksdale also claims he observed another incident prior to 10 p.m. involving the two women wherein a bet which he alleges one of the women should have lost, paid out $14.00. Barksdale claims he did not report the payoff on this bet because he claims that the incident should have been reported to his supervisor, i.e., respondent, who had instructed the dealer, Don Cross, to pay off the bet.

Barksdale further claims that prior to 10 p.m. there was an additional incident wherein respondent instructed Barksdale to hand him the die to examine, instructions which Barksdale admits were not out of the ordinary. However, Barksdale allegedly did not hear respondent's first request, claiming that respondent cursed at him when he made a second request to examine the die. He then alleged that respondent dropped the die on the casino floor which he then picked up off the floor, a move which Barksdale claims is "out of the ordinary." Barksdale also claims that at some point prior to 10 p.m., respondent instructed Huber, the boxman, that if the women rolled an 11, to set up the bet as a C & E bet and pay off $7 to each woman. Barksdale alleges that giving such instructions to a boxman is also "out of the ordinary."

Approximately one hour after the two videotaped incidents which occurred at 10:07 p.m. and 10:11 p.m., Barksdale was pulled off the game by management and questioned about both incidents. He was not questioned about any incidents which occurred prior to 10:00 p.m. Because he observed the two illegal payoffs take place, and did not independently report the incidents, he was suspended from his job for three or four days. Barksdale admits that when he was questioned in the manager's office after the incidents occurred, that he was not concerned about losing his license, but was concerned about being fired from his job.

Barksdale testified that he was "intimidated" by respondent on the evening of February 22, 1984 and that he paid the two females for one of the two illegal videotaped payoffs at the instruction of Donald Cross, the stickman, claiming that he felt intimidated by respondent even though respondent was not present during the two illegal payoffs. He also stated that some of the intimidation was also due to incidents which occurred prior to February 22, 1984 during which Barksdale claims respondent screamed, yelled, and cursed. Barksdale stated that he simply follows the instructions of his superiors while he is on the job, and he also admitted that when respondent was on his break between 10:00 and 10:30 p.m. on February 22, 1984, that he had no contact with him during that half hour.

On March 1, 1984, Detective Ronald Bunkowski who had been employed by the New Jersey State Police for 11 1/2 years, having been assigned as a detective in the Casino Investigation Bureau for the past 4 1/2 years, prepared an investigation report of the February 22, 1984 incidents. On March 1, 1984, Bunkowski interviewed Albert Huber, Donald Cross, Charles Barksdale, Anthony Zito, Howard Grasso, and respondent (P-1).

Barksdale testified that his statement (located at the bottom of page three and top of page four) in the investigation report did not represent the entire statement which he gave to Bunkowski. At the hearing, Bunkowski reviewed his investigation report and affirmed its accuracy.

Anthony Zito was working as the relief floorperson at the Sands on the swing shift from 8:00 p.m. to 4:00 a.m. on February 22, 1984. His duties were to relieve the floorperson for four different craps games for one-half hour apiece during the evening. At 10:00 p.m. he relieved respondent for respondent's 10:00-10:30 p.m. break. Zito testified that during respondent's break he watched only table 8 and that he also issued markers, a procedure which required some paperwork which might have partially taken his attention away from the game. However, the state police investigation report (P-1), states that Zito told Detective Bunkowski on March 2, 1984, that he was not paying substantial attention to craps table 8 because he was also watching another craps game where the patrons were making larger bets. At the hearing, he denied making that statement to Detective Bunkowski. Zito claims that he did not observe any illegal bets or payoffs during his coverage of table 8 on February 22, 1984, although, he observed one payoff which he considered to be "irregular but not illegal."

After Zito was relieved by respondent, he had no further contact with him until 2:30 a.m. the following morning when he claims that respondent telephoned him at home and was "urgent" to talk to him. Huber and respondent went to Zito's residence where they discussed the statement Zito had given in the casino manager's office after the two illegal payoffs occurred. Zito had been sent home before his shift was completed, although he claims that he was not told why management was sending him home early. Zito claims that respondent told him that he was concerned that they all have the same story, that they "stick together" since they were managers, and that the dealers should take the blame for the illegal payoffs. Zito later reported this conversation with Huber and Napoliello to the casino manager. Zito permitted Huber and Napoliello to come to his residence because he also was concerned about any statements which had been given in the casino manager's office. He thought his job might be jeopardized since he had been pulled off his shift early and was questioned about what happened. Zito was not suspended from employment as a result of the illegal payoffs.

Zito has worked for the Sands since May 1981. He is currently employed as a boxperson. He described a floorperson's duties as ensuring that the employees are doing their job legally and observing whether the patrons are gambling legally. Zito admits that the supervision of craps table 8 during respondent's break was his responsibility and not respondent's. Zito had the opportunity to observe the videotape in the casino manager's office the afternoon after the two illegal payoffs occurred, and prior to giving his statement to Detective Bunkowski on March 2, 1984. With regard to the payoff which Zito described as "irregular but not illegal", he claims he questioned Al Huber about the incident and was assured by Huber that it was a proper payoff. However, when Zito reviewed the videotape, he ascertained that in fact the payoff was improper, and realized that Huber had lied to him.

When respondent returned from his break at 10:30 p.m., he claimed that he "felt tension" and asked Huber if anything was wrong. Huber replied negatively. Management then proceeded to pull one dealer at a time off the game. Respondent was also taken to the casino manager's office and informed about the videotape. Respondent stated that he was on break when the videotape was made. He was told by the shift manager to go home and to telephone the casino manager's office at 3:00 p.m. the following day. He then went to the Continental Bar with Al Huber who had been working the game while respondent was on break. He discussed what each of them had told the shift manager, and respondent claims that it was Huber who telephoned Zito to request that he and respondent meet with Zito to discuss the statements that each of them had given in the casino manager's office. Respondent denies that he said anything about the "dealers taking the rap." He denies that he was responsible for any illegal payoffs on February 22, 1984, and he denies that he cursed at Barksdale when Barksdale initially did not hand him the die. He admits that he wrongfully denied to Detective Bunkowski that he had asked Barksdale for the die. He admits that the denial was made because he was concerned about his job. He stated that he was somewhat upset when he leaarned on February 22, 1984 that he would have to work the following evening since he had made plans to do something else, but this change in plans did not cause him to take his anger out on his employer by making illegal payoffs.

Glen A. Russell is 32 years old, is employed at Harrah's Hotel Casino and holds a boxperson license. He has known respondent for four years, and resided with him for approximately six months. He perceives respondent to be an honest person, and he is not

aware of respondent being known by any derogatory nicknames (Barksdale had testified that respondent was known at the Sands as "Mad Dog"). I find that the nickname has no relevance to this proceeding. Russell and respondent occasionally confide in each other, although, Russell found out about the details of the February 22, 1984 incident approximately one or two months after the incident through someone other than respondent. Respondent had simply told Russell that he was not working and that he had problems at work.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to N.J.S.A. 5:12-86g, a licensee may be rendered disqualified from licensure if he has committed ". . .any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State. . ." N.J.S.A. 5:12-86c(4) provides that an individual may be ineligible for licensure if he has committed any offense which is inimical to the policy of the Casino Control Act and to casino operations. A person who by any trick or fraud or fraudulent scheme for himself or on behalf of another in an attempt to win money or reduce a losing wager in connection with casino gaming is guilty of a crime of the fourth degree, unless the value of the money is $25 or less, in which case the person is guilty of a disorderly persons offense. I **CONCLUDE** that a licensee who violates N.J.S.A. 5:12-113 during the course of his employment, has engaged in an offense which is inimical to the policy of the Casino Control Act and to casino operations. Having concluded that a violation of N.J.S.A. 5:12-113 by a casino employee during the course of his employment, is inimical to the Casino Control Act, the burden of proof is upon the Division by a preponderance of the evidence to demonstrate that respondent violated section 113 of the Act, pursuant to N.J.S.A. 5:12-86g.

I **CONCLUDE** that respondent did not violate N.J.S.A. 5:12-113 regarding the two illegal payoffs at craps table 8, which were videotaped at 10:07 p.m. and 10:11 p.m. on February 22, 1984. The undisputed facts are that respondent was on his break at the time of the payoffs and had absolutely no contact or communication of any kind with any person at craps table 8 from 10:00 p.m. until 10:30 p.m. I reject the allegations that the illegal payoffs took place because certain individuals working at craps table 8 were "intimidated" by respondent, whose physical presence was totally removed from the table

during the time that the illegal bets took place. The testimony of Anthony Zito who was the relief floorperson did not reveal that any of the persons working craps table 8 were "intimidated" between the hours of 10:00 and 10:30 p.m. The only evidence presented of alleged intimidation was (1) through the testimony of Charles Barksdale, who claimed that he was intimidated by respondent's behavior prior to February 22, 1984 and (2) through statements set forth in the State Police investigation report, (P-1). I find Barksdale's claims of intimidation to be far-fetched and not believable, having had the opportunity to observe him testifying and demonstrating himself to be a self-confident person. Additionally, the allegations that he was intimidated by respondent's behavior prior to 10:00 p.m. on the evening of February 22, 1984 are also not persuasive. There was nothing in Barksdale's testimony to suggest that respondent had threatened him with physical violence or the possibility of loss of his job. Even if respondent did curse at Barksdale concerning the die, that act is insufficient to rationalize Barksdale making an illegal payoff due to "intimidation".

I further **CONCLUDE** that the incident which Barksdale described which allegedly occurred before 10:00 p.m. involving respondent's request of Barksdale to give him the die to look at, does not in any way constitute a violation of N.J.S.A. 5:12-113, since there was no evidence presented regarding that incident which even remotely suggested that respondent unlawfully permitted or attempted to permit the two women win or reduce a losing wager.

With regard to the other incidents to which Barksdale testified alleging that they were either out of the ordinary or illegal (incidents occurring before 10:00 p.m.), I note that respondent disputes that he participated in any illegal behavior on the evening of February 22, 1984. The burden of proof by the preponderance of the evidence requires the party with the burden to demonstrate that a desired inference is more probable than not. If the facts are in equipoise, the litigant with the burden of proof has failed to meet its burden. Cvelich v. Erie Railroad Company, 120 N.J.L. 414 (Sup. Ct. 1938), aff'd. 122 N.J.L. 26 (E.&A. 1938), cert. den. 307 U.S. 633 (1939). The only testimony as to the pre-10:00 p.m. incidents was elicited from Barksdale and respondent. The facts are clearly in equipoise, even if, arguendo, maximum weight is accorded to Barksdale's testimony. No reasonable inference can be drawn that respondent did violate N.J.S.A. 5:12-113 prior to 10:00 p.m. on the evening of February 22, 1984.

I note that Detective Bunkowski's investigation report (P-1) was detailed and complete. However, the report consists of statements made by several persons working at or supervising craps table 8, which statements were given approximately one week after the incident occurred. It is significant that all of the persons interviewed by Detective Bunkowski, (including respondent) clearly had an interest in protecting their employment positions through presenting themselves and their involvement in the incidents in question in the most favorable light. Respondent openly admitted at the hearing that one statement he gave to Detective Bunkowski was inaccurate. Additionally, Barksdale also claims that the summary of his interview with Bunkowski was not entirely accurate, and Zito also disputes a statement contained in Bunkowski's report. Zito also claimed that Huber lied to him about the illegal payoff, thus raising additional questions as to the accuracy of statements given by Huber to Bunkowski. Consequently, one must query as to whether the investigation report is accurate, or as to whether the testimony of Zito and Barksdale must be questioned. Hence, I **CONCLUDE** that Detective Bunkowski's report, cannot be fairly relied upon in and of itself as a sufficient basis to find that respondent violated N.J.S.A. 5:12-113. While the report may be totally accurate, the unexplained inconsistencies between the testimony of the Division's witnesses and the document introduced into evidence by the Divison falls far short of meeting the burden of proof by the preponderance of the evidence. I cannot possibly conclude from the evidence presented that respondent violated N.J.S.A. 5:12-113. Additionally, several of the persons interviewed by Detective Bunkowski did not testify at the hearing, and the report contains multiple hearsay statements from persons who did not appear at the hearing.

Having concluded that respondent did not violate N.J.S.A. 5:12-113, it is unnecessary to address the issue of rehabilitation (noting that rehabilitation actually only applies to a conviction of a statutory disqualifying offenses, although, the analysis of the issue of inimicality is substantially similar to the proofs required in demonstrating rehabilitation).

Hence, the only remaining issue to be addressed is whether respondent possesses the requisite good character, honesty and integrity required by the Casino Control Act, a burden which must be met by respondent by clear and convincing evidence. In order for respondent to have initially obtained his license, he had to demonstrate that he possessed good character, honesty and integrity. Now, based upon allegations of a violation of N.J.S.A. 5:12-113, which allegations I have concluded are without merit,

respondent is once again asked to demonstrate that he possesses good character, honesty and integrity. While respondent presented only one character witness, the witness testified favorably as to respondent's good character, honesty and integrity, which testimony was not shaken on cross examination. Having concluded that respondent did not violate N.J.S.A. 5:12-113, his good character, honesty and integrity have not been impaired. The combination of the Division's failure to meet its burden of proof plus the testimony of respondent's character witness leads to the conclusion that respondent continues to possess the good character, honesty and integrity required for licensure.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the Division's complaint to revoke respondent's license is hereby **DISMISSED.** Respondent shall retain his casino employee license.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 29, 1985 11:45 a.m. _____
DATE **VALERIE H. ARMSTRONG, ALJ**

Receipt Acknowledged:

March 29 1985 _____
DATE CASINO CONTROL COMMISSION

Mailed to Parties:

APR 02 1985 _____
DATE OFFICE OF ADMINISTRATIVE LAW

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 New Jersey State Police Investigation Report, dated 3-1-84 (5 pages); New Jersey State Police Arrest Report, dated 3-1-84 (3 pages); municipal court complaints filed against Napoliello, Huber and Cross, dated 3-1-84

R-1 Marked only for identification - same exhibit as P-1 in evidence

J-1 Videotape of two illegal payoffs occurring on 2-22-84

J-2 Administrative dismissal of complaints filed against Napoliello, Huber and Cross, dated 6-12-84

LIST OF WITNESSES

For petitioner:

Charles Barksdale
Detective Ronald Bunkowski
Anthony Zito

For respondent:

Robert Napoliello
Glen A. Russell

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-51
OAL DOCKET NO. CCC 3131-84
REGISTRATION NO. 45679-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
ORLANDO OSPINA-LOPEZ,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law (OAL) on September 17, 1984, recommending that the respondent's casino hotel employee registration be revoked; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 28, 1984, to reject the said Initial Decision and to dismiss the complaint filed by the Division of Gaming Enforcement (DGE) on February 17, 1984,

IT IS on this 14th day of JANUARY 1985, ORDERED that the recommendation of the OAL to revoke the respondent's casino hotel employee registration be and hereby is rejected for the following reasons:

1. The Administrative Law Judge (ALJ) found as fact that Mr. Ospina-Lopez knew that the social security card which he had purchased on a street in Paterson, New Jersey was not a legitimate one and rejected the respondent's claim that he thought the number was "good." The ALJ thereupon concluded that the respondent "provided fraudulent information to the Commission in his application for registration [and] has forfeited his right to licensure pursuant to N.J.S.A. 5:12-86(b)."

   A social security number is not included among the information that the Commission requires applicants to provide on a PHDF-4. Moreover, there is no finding by the ALJ, nor do we perceive any evidence in the record created at the OAL, to establish that the false information supplied by the respondent is "untrue or misleading as to a material fact pertaining to the qualification criteria." N.J.S.A. 5:12-86(b).

2. The ALJ further concluded that, "licensing someone who provides false information to the Commission certainly would be inimical to the policies of the Casino Control Act and thus licensure is barred by Section 86(d)."

   The citation to section 86(d) is an apparent error; we assume the intended reference was to section 86(c)(4). However, such a conclusion is rejected because no criminal or disorderly person's offense has been identified that would warrant disqualification under the so-called "inimical clause" of section 86(c)(4). Nor, we add, would such a conclusion be necessary in the event a section 86(b) disqualifier was demonstrated.

IT IS FURTHER ORDERED that the contention of the DGE that the respondent's status as an illegal alien constitutes an inimical offense pursuant to section 86(c)(4) of the Act (which issue the ALJ noted he need not reach in view of his recommended disposition) be and hereby is rejected. Reading the complaint and the record most favorably to the Division of Gaming Enforcement, we find no grounds to conclude that such status constitutes a criminal or disorderly person's offense which is necessary for disqualification under section 86(c)(4).

IT IS FURTHER ORDERED that the complaint seeking revocation of the respondent's casino hotel employee registration be and hereby is dismissed.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Orlando Ospina-Lopez and the DGE within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

OAL
WORD PROCESSING
TRE[illegible]

State of New Jersey SEP 17 10 59 AM '84

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3131-84
AGENCY DKT. NO. 84-51

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
ORLANDO OSPINA-LOPEZ,
Respondent.

Paul Vagiamos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Orlando Ospina-Lopez, pro se

Augustin Gonsales, Interpreter

Record Closed: August 2, 1984 Decided: September 14, 1984

BEFORE **JEFF S. MASIN,** ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on February 17, 1984, seeking an order revoking the casino hotel employee registration of Orlando Ospina-Lopez. Mr. Lopez requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 12, 1984, and a prehearing order was issued on June 21, 1984. A hearing was held at the Atlantic County Courthouse in Atlantic City on August 2, 1984.

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In the prehearing order, the petitioner listed the grounds upon which it sought the revocation of the registration. It claimed that Ospino-Lopez had entered the United States illegally in violation of the Immigration and Nationality Act, Section 241(a)(2), in that he entered the country without inspection. In addition, the Division contended that Mr. Ospina-Lopez had provided a fraudulent social security number in connection with his Personal History Disclosure Form No. 4. Such action, in the Division's view, would violate Section 86(b) of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Division also argues that continued registration of the respondent would be inimical to the policy of the Casino Control Act and casino operations, thus requiring a revocation pursuant to N.J.S.A. 5:12-86d.

In addition to the above issues, the prehearing order noted that, if the respondent had committed violations, that a determination would have to be made as to whether he had rehabilitated himself from the adverse affects of his actions so as to permit his continued registration, pursuant to N.J.S.A. 5:12-91(h).

The testimony provided at the hearing by Walter Hempel, II, a criminal investigator for the United States Immigration and Naturalization Service, indicated that Hempel had arrested Lopez at the Golden Nugget Casino on charges stemming from Lopez' entry into the United States without inspection near San Ysidro, California. Entering the United States without inspection is a violation of 8 U.S.C. 1325. According to Mr. Hempel, Mr. Lopez admitted to him that he had entered the country without inspection.

On October 13, 1983, the United States Department of Justice, through the Immigration and Naturalization Service, filed an Order to Show Cause seeking to have Mr. Lopez deported. By order of July 20, 1984, Honorable Nathan W. Gordon, Immigration Judge, ordered that, "in lieu of an Order of Deportation respondent be granted voluntary departure without expense to the government on or before November 26, 1984." No stay of execution of this decision has been sought.

Mr. Ospino-Lopez testified that he did indeed enter the country by automobile near San Ysidro in February 1979 and that he did not submit himself for inspection when he entered the country. He came to Atlantic City in 1983 and obtained employment in the Steward Department of the Golden Nugget Casino. He has worked there for one year and has had no problems. He presented a letter from Joe Pizzino, Assistant Executive

Steward and Vincent Cibotti, Steward Supervisor, dated December 27, 1983, in which the gentlemen indicated that his performance has been "noteworthy." The writers proceed to state that Lopez is a "dynamic steward who is intelligent and demonstrates a degree of integrity and loyalty. Industrious, thorough, and accurate in his work and extremely conscientious." The letter concludes:

> In short, Orlando's responsible work habits, dedication to duty, and sincere desire to do well are invaluble assets which significantly increase his overall value.
>
> He is definitely an asset to any organization.

With respect to the social security number which Mr. Lopez supplied to the Casino Control Commission in his Personal History Disclosure Form 4, he stated that he had bought the social security card on a street in Paterson, New Jersey. He claimed that he thought the number was good. When asked the circumstances under which he bought it, he said that it was offered to him and he purchased it.

Mr. Lopez was married in October 1979 in Passaic, New Jersey, to Ramona Velasquez. He does not live with her now and claims that they never understood each other. They are not divorced and he has contact with her in Puerto Rico, where she resides. He has one child, four years old, who was born during the two years in which he lived with his wife. She is a United States citizen, having been born in New York.

According to the respondent, he knows he has been ordered to leave the country and he has not asked for an extension. Apparently he intends to return to Columbia. He concluded by noting that he had come to this country to find "a better life."

DISCUSSION

The potential issues in this case involve, among others, the sensitive question of whether employment of an illegal alien in the casino industry is per se inimical. In determining this matter, that issue need not be faced. I **FIND** that Mr. Lopez knew very well that the social security card which he purchased on a street in Paterson was not a legitimate one. I cannot accept the claim that he thought the number was "good." Having provided fraudulent information to the Commission in his application for registration, he

has forfeited his right to licensure, pursuant to N.J.S.A. 5:12-86b. Further, licensing someone who provides false information to the Commission certainly would be inimical to the policies of the Casino Control Act and thus licensure is barred by Section 86(d).

With respect to the question of rehabilitation, it seems that Mr. Ospino-Lopez has been a good employee at the Golden Nugget. However, I have **CONCLUDED** that he provided false information to the Commission, a very serious matter in a highly regulated employment atmosphere such as the casino industry. Where a person has demonstrated that his word and deed are unreliable with respect to the very licensing process, then it seems that rehabilitation from such a detrimental position is extremely difficult to establish, particularly after only one year of employment. I am unwilling to find that Mr. Ospino-Lopez has rehabilitated himself from the adverse impact of his actions. Further, with respect to the violation of Section 86(b), rehabilitation is specifically not applicable.

For the reasons expressed, the application for revocation of Mr. Ospino-Lopez' hotel registration is granted. It is **ORDERED** that the license shall be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 14, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 19 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Record of Deportable Alien

P-2 United States Department of Justice, Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien

P-3 Memorandum from the United States Department of Justice to Major Robert Winters, Division of Gaming Enforcement

P-4 Personal History Disclosure Form No. 4, 2 pages

P-5 Decision of the Immigration Judge in the deportation proceedings of Orlando Ospino-Lopez

On behalf of respondent:

R-1 Letter of December 27, 1983, from Joe Pizzino and Vincent Cibotti

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-52
OAL DOCKET NO. CCC 2546-84
REGISTRATION NO. 48615-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
MORGAN G. PALACIO-FIGUEROA,		
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 16, 1985, in which the Administrative Law Judge concluded that the respondent had abandoned his right to a hearing on the complaint filed by the Division of Gaming Enforcement on February 17, 1984, which seeks revocation of his casino hotel employee registration; and it appearing that said abandonment constitutes an admission of all matters and facts contained in the complaint pursuant to N.J.S.A. 5:12-108(d); and the Commission, after considering the entire record of these proceedings at its public meeting of February 20, 1985, having failed to resolve by majority vote to affirm, reject or modify the Initial Decision,

IT IS on this 14th day of MARCH 1985, ORDERED that the casino hotel employee registration of Morgan G. Palacio-Figueroa be and hereby is revoked pursuant to N.J.S.A. 52:14B-10 based upon the reasons set forth in the Initial Decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Morgan G. Palacio-Figueroa be and hereby is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the respondent, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
ABANDONMENT
OAL DKT. NO. CCC 2546-84
AGENCY DKT. NO. 84-52

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MORGAN G. PALACIO-FIGUEROA,
Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

No appearance by or on behalf of respondent

Record Closed: December 19, 1984 Decided: January 10, 1985

BEFORE **JEFF S. MASIN,** ALJ:

In this matter the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking an order revoking the casino hotel registration of the respondent. The Division claimed the Mr. Palacio-Figueroa had entered the United States without inspection, in violation of Section 241(a)(2) of the Immigration and Nationality Act. The Division contended that illegal entry barred Mr. Palacio-Figueroa from registration because of the inimicality of such conduct, N.J.S.A. 5:12-86(c)(4).

A prehearing conference was held on May 25, 1984. Thereafter, a Prehearing Order was issued on June 11, 1984. A hearing was scheduled but was adjourned due to a personal problem of the attorney for respondent and also because of a belief that the Casino Control Commission would be determining a matter of policy affecting the status of illegal aliens working in the casino industry. However, the matter was rescheduled for a hearing on November 28, 1984. Prior to that date, counsel for the respondent advised that he had had no contact with his client and believed that his client might have left the State of New Jersey. On the date of the hearing, Mr. Palacio-Figueroa failed to appear and made no contact with either his attorney, the Division or the Office of Administrative Law.

In view of Mr. Palacio-Figueroa's failure to appear at the hearing and his failure to keep in contact with his attorney, I **CONCLUDE** that he has abandoned any intention of opposing the Division's application for revocation of his casino hotel registration. Therefore, it is **ORDERED** that this matter be returned to the Casino Control Commission for such administrative procedures as may be required to effectuate the revocation.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 2546-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 6, 1988
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 1 0 1988
DATE

Ronald L. Parker /pko
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-364
OAL DOCKET NO. CCC 4891-84
LICENSE NO. 07940-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
ROBERT E. PALMIERI,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 2, 1984, recommending that the respondent's casino employee license be revoked; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of January 16, 1985, to modify the Initial Decision and to revoke the respondent's casino employee license,

IT IS on this 11th day of February, 1985, ORDERED that the following conclusions of law in the Initial Decision of the Office of Administrative Law in this matter be and hereby are rejected:

1. That portion of the Initial Decision which finds that the respondent has not demonstrated that his continued licensure would not be inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)(4) is rejected. In revocation cases, the burden is on the Division to show by a fair preponderance of the evidence that an individual is disqualified under N.J.S.A. 5:12-86. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (1979).

2. That portion of the Initial Decision which finds that the Division has demonstrated by a fair preponderance of the evidence that the applicant has engaged in conduct constituting the crime of conspiracy, N.J.S.A. 2C:5-2 is rejected as unnecessary. The applicant's disqualification is based upon his conduct which constituted the offense of receiving stolen property in the third degree, in violation of N.J.S.A. 2C:20-7, an enumerated disqualifier pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

IT IS FURTHER ORDERED that the respondent's casino employee license be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Robert E. Palmieri is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the

Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Robert E. Palmieri, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4891-84
AGENCY DKT. NO. 83-364

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
ROBERT E. PALMIERI,
Respondent.

Paul Vagianos and **William E. Mountford,** Deputy Attorney Generals, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Ralph B. Hill, III, Esq., for the respondent

Record Closed: September 27, 1984 Decided: November 2, 1984

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint filed by the Division of Gaming Enforcement (hereinafter referred to as "Division") with the Casino Control Commission on October 19, 1983, seeking the revocation of the respondent's casino employee license, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Palmieri requested a hearing. On application filed by the Division, the Casino Control Commission suspended the respondent's casino employee license on November 3, 1983. Thereafter, by order dated July 2, 1984, the Commission vacated its prior order and reinstated the respondent's casino employee license and ordered that the matter be transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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The prehearing conference was held by way of a telephone conference call on July 30, 1984, and at that time, the parties agreed that the issues in this matter are:

(a) Whether the respondent is disqualified from licensure as a result of certain alleged criminal activities, pursuant to N.J.S.A. 5:12-86g.

(b) If the allegations relating to the criminal activities are true, whether the respondent's continued licensure would be inimicable to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

(c) Whether the respondent can establish his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

(d) Whether the respondent can establish that he has been rehabilitated as provided by N.J.S.A. 5:12-90h.

The hearing took place on September 27, 1984, and based on the testimony and exhibits I **FIND** that the facts in this matter are not in dispute.

On August 5, 1983, $10,000 worth of jewelry was taken from the locker of Mark Peritz, an employee of Tropicana Hotel and Casino (P-4). Both the respondent and his roommate, Randall W. Allen, worked as dealers for Tropicana. Thereafter, on August 11, 1983, the respondent was arrested at Gionti Jewelry Store while he was attempting to sell approximately $6,000 worth of jewelry which was later identified as part of the jewelry taken from the locker of Mr. Peritz (P-2, P-6).

After his arrest, Mr. Palmieri admitted that he tried to sell stolen jewelry and alleged that the jewelry had been taken from Mr. Peritz's locker by Mr. Allen (P-2, P-3). The respondent also gave the police information as to the possible location of the rest of the jewelry, including the fact that some of the jewelry had been sold for $300 to Mancuso's Jewelry Store (P-3). An employee of Mancuso's Jewelry Store confirmed the purchase of jewelry for $300 from a John Randall who had come to the store with the respondent, and this jewelry was later identified by Mr. Peritz (P-2, P-3, P-6).

Mr. Allen was arrested on August 12, 1983, and he and the respondent were indicted (P-5). In the indictment, the respondent and Mr. Allen were charged with

conspiracy and theft by receiving and having in their possession stolen property, and Mr. Allen was charged with theft by unlawful taking (P-5).

Mr. Palmieri entered the Pre-Trial Intervention Program and after he successfully completed the program, the indictment against him was dismissed on May 9, 1984 (R-1).

At the hearing, Mr. Palmieri admitted that Mr. Allen told him that he stole the jewelry and the respondent agreed to help Mr. Allen sell the jewelry. Mr. Palmieri denied that he was involved with the theft of the jewelry.

According to the respondent, he had known Mr. Allen for approximately four months prior to the incident and had been his roommate for approximately three months. The respondent was aware that Mr. Allen had financial problems and was behind in the payment of his portion of the rent. Mr. Allen owed the respondent approximately $1,000. Since Mr. Palmieri was afraid that they would lose their apartment and he wanted the money owed to him by Mr. Allen, the respondent agreed to help Mr. Allen sell the jewelry. Mr. Palmieri stated that Mr. Allen had asked him to help sell the jewelry because Mr. Allen was not familiar with the area. Mr. Allen promised to give Mr. Palmieri half of the money that they received from the sale of the jewelry. Mr. Palmieri also stated that he expected to get only what Mr. Allen owed him.

At the time of his arrest, Mr. Palmieri was 22 years old and had been employed as a dealer by various casinos for three years. Mr. Palmieri is a high school graduate and successfully completed the casino course to become a dealer. Except for the arrest set forth above, Mr. Palmieri has had no other criminal arrests or convictions.

After Mr. Palmieri was arrested, he lost his job with Tropicana Hotel and Casino. Mr. Palmieri then helped his father open a shoe store and worked there as an assistant manager for about six months. The respondent left this job for a better position and is now employed as an assistant manager of a toy store.

Currently, Mr. Palmieri lives with his father. The respondent plans to get married soon and would like to get another job in the casino industry. Mr. Palmieri stated that he no longer associates with Mr. Allen and that he considered his criminal action to be a stupid mistake which resulted in the loss of respect of his family and friends and

which has had a financial impact on him. Mr. Palmieri expressed remorse and a resolution not to get involved in any further criminal activities.

On behalf of the respondent, Robert S. Jackson testified that he had been the respondent's counselor during the respondent's participation in the Pre-Trial Intervention Program. Mr. Jackson saw the respondent twice a month for a period of time and then once a month during the six-month period. As part of the program, Mr. Palmieri made restitution and completed 60 hours of volunteer work for a community service organization. Mr. Jackson stated that the respondent had a good attitude. It is Mr. Jackson's opinion that the respondent is not the type of person who will get involved in any other criminal activities.

The respondent's father testified that his son is a hard worker and that his son has a good reputation.

Based on the facts, I **CONCLUDE** that the Division has shown that the respondent was guilty of conspiracy and of having stolen property in his possession and has established a statutory disqualification, pursuant to N.J.S.A. 5:12-86g and 5:12-86c(1).

As to the other issues in this matter, Mr. Hill argued that the respondent's criminal action is an isolated incident and occurred only after the respondent was "tempted" by his roommate. Mr. Hill argued that the respondent was an inexperienced youth at the time of the criminal incident and that Mr. Palmieri has shown that he is now rehabilitated.

Mr. Vagianos argued that the respondent was involved in serious criminal violations and that his action was motivated solely by his desire for money. Mr. Vagianos noted that a casino employee license allows a person to hold a responsible position with a casino and that a dealer handles large amounts of money. According to Mr. Vagianos, the respondent was not an inexperienced youth at the time of the incident. He further asserted that not enough time has passed to show clearly that the respondent has been rehabilitated.

Because a statutory disqualifier has been established, the burden has shifted to the respondent to show that he has been rehabilitated. The Casino Control Act sets forth the following eight specific criteria to be evaluated in order to reach a determination as to rehabilitation:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.
[N.J.S.A. 5:12-90h]

The facts show that the criminal activity of the respondent was an isolated incident which has had a major financial and emotional impact on him, and I accept the respondent's representation that he now understands the significance of his action and is truly remorseful about his involvement. I also recognize that the license involved in the matter carries with it substantial responsibilities. Based on the facts, especially the fact that the respondent completed the Pre-Trial Intervention Program just a short time ago, I **CONCLUDE** that Mr. Palmieri has not shown that he has been rehabilitated as set forth in N.J.S.A. 5:12-90h, that he posseses the necessary good character, honesty and integrity required by N.J.S.A. 5:12-89b(2), nor that his continued licensure would not be inimical to the policy of the Casino Control Act, N.J.S.A. 5:12-86c(4).

Therefore, I **ORDER** that the casino employee license of Robert E. Palmieri be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 2, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

November 2, 1984
DATE

Nancy O. Finkel
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

NOV 0 5 1984
DATE

Ronald L. Parker/pro
OFFICE OF ADMINISTRATIVE LAW

bc

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EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:

P-1 New Jersey State Police Investigation Report, dated August 15, 1983

P-2 Hammonton Police Department Investigation Report, dated August 12, 1983

P-3 Voluntary Statement of Robert Palmieri, dated August 11, 1983

P-4 Tropicana Hotel and Casino Investigation Report, dated August 5, 1983

P-5 Indictment filed against Randall W. Allen and Robert Palmieri

P-6 Complaint filed against Robert Palmieri, dated August 11, 1983

FOR THE RESPONDENT:

R-1 Order of Dismissal of the Indictment filed against Robert Palmieri, dated May 9, 1984

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Robert Jackson
Edward Palmieri
Robert E. Palmieri

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION NO. 166306

IN THE MATTER OF THE PETITION OF PAXSON-FORD ASSOCIATES, INC. TO PROVIDE TEMPORARY EMPLOYEES TO CASINOS	ORDER

This matter having been opened to the Casino Control Commission for consideration at its December 19, 1984 public meeting, upon the petition of Paxson-Ford Associates, Inc. for permission to provide casino licensees with temporary licensed casino employees to fill gaming related positions; and the Commission having considered all the submissions of the parties and the arguments of all counsel concerned; and the Commission having determined that Paxson-Ford Associates, Inc. may not provide casino licensees with temporary licensed casino employees to fill gaming related positions pursuant to the terms of its petition and form contracts as provided in exhibits attached to said petition,

IT IS on this 19th day of February, 1985, ORDERED that the petition of Paxson-Ford Associates, Inc. for permission to provide casino licensees with temporary licensed casino employees to fill gaming related positions is hereby denied.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.

IN THE MATTER OF THE PETITION OF PAXSON-FORD ASSOCIATES, INC. TO PROVIDE TEMPORARY EMPLOYEES TO CASINOS	OPINION

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman
E. Kenneth Burdge, Vice Chairman
Carl Zeitz, Commissioner
Joel R. Jacobson, Commissioner

APPEARANCES:

For Paxson-Ford Associates, Inc.:

James J. Gruccio, Esquire
Tuso, Gruccio, Pepper, Giovanazzi & Butler, PA

For the Division of Gaming Enforcement:

Fredric E. Gushin, Deputy Attorney General

For the Casino Control Commission:

Patricia M. Kerins, Senior Assistant Counsel

Paxson-Ford Associates, Inc. ("Paxson-Ford") is an employment agency located in Atlantic City and presently provides non-gaming employees to casino hotels on a temporary basis. As such, Paxson-Ford is a licensed non-gaming related

casino service industry pursuant to N.J.S.A. 5:12-92(c). This matter was brought before the Commission on December 19, 1984, for consideration of a petition for a declaratory ruling filed by Paxson-Ford on July 15, 1983. The petition requested permission to provide temporary employees for certain positions which require licensure as a casino employee, either gaming or non-gaming related pursuant to N.J.S.A. 5:12-90.[1]

The Division responded to the petition by letter-report dated September 26, 1983, and recommended that the Commission deny the petition based upon objections both legal and factual in nature. A prehearing conference was held before Commissioner Joel Jacobson on January 26, 1984, to identify the issues to be

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1. The positions for which Paxson-Ford proposed to offer temporary employees are as follows:

Gaming License Required	Non-Gaming License Required
Dealer	Casino Secretarial
Slot Mechanics	Casino Clerk
Slot Attendants	Casino Maintenance
Casino Credit Clerks	Arcade Room Attendants
Collecting Clerks	Administrative Assistants
Casino Hosts	
Count Room Employees	
Casino Tellers	
Pit Clerks	
Slot Change Persons	
Slot Booth Cashier	
Cage Cashier	
EDP Employees	

resolved.[2] Following the prehearing conference Paxson-Ford

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2. As originally constituted the proposal raised the following issues which were identified in the prehearing conference order:

A. Whether the individuals to be provided as temporary employees to the holders of casino licenses will be employees of Paxson-Ford or of the casino licensee.

B. Whether the casino licensee or Paxson-Ford will be responsible for the training, conduct and accountability of these individuals in the performance of their duties.

C. Whether the relief sought by petitioner Paxson-Ford will undermine the legislative policy present in N.J.S.A. 5:12-1 concerning the integrity of casino gaming.

D. Whether this proposal will conflict with N.J.S.A. 5:12-134 and 135 as well as the regulations promulgated thereto, N.J.A.C. 19:53-1 et seq., concerning affirmative action.

E. Whether, and if so how, N.J.S.A. 5:12-100(n) is to be applied to individuals placed under petitioner's proposal.

F. How, given petitioner's proposed status as an applicant for licensure as a gaming related casino service industry pursuant to N.J.S.A. 5:12-92(a), any business transaction waiver requests concerning it will be handled by the Commission.

G. Whether the proposal put forth by petitioner will interfere with, or is prohibited by, the system of employee work permits as set forth in N.J.S.A. 5:12-48, 106, 117 and 142, as well as any regulation promulgated thereto.

H. Whether Paxson-Ford or the casino licensee will serve as a conduit for the following with regard to the individual employees involved in this proposal:

1. Filing of Personal History Disclosure Forms
2. Issuance of Access Badges and Credentials
3. Notification of License Suspensions, Revocations and Expirations
4. Accounting and recording of employee gaming hours
5. Filing of Petitions for:
   (a) Registrations pursuant to N.J.S.A. 5:12-91(f)
   (b) Temporary Casino Employee Licenses (non-gaming related) N.J.S.A. 5:12-90(g)
   (c) Temporary Key Employee Licenses N.J.S.A. 5:12-89(e)

I. Whether this proposal conflicts with the provisions of the Casino Control Act and its regulations concerning gaming schools.

J. Whether, and how, N.J.A.C. 19:45-1.19(b) which governs the distribution of tips, may be implemented with regard to this proposal.

K. Whether petitioner's proposal will interfere with the function of the employee termination runs provided to the Division of Gaming Enforcement by the casino licensee.

submitted a memorandum which altered its original proposal in several ways.

The petition as amended by the memorandum proposed that the temporary employees provided to the casinos would have a "co-employee" status. Paxson-Ford would retain the payroll function and would also place restrictions on permanent employment of the employee with a casino. The casino would retain control over various operational functions it presently assumes such as work permits, termination runs, access badges and license credentials. Paxson-Ford stipulated that no supervisory or management positions nor any security or surveillance positions would be offered and that only persons with valid plenary licenses would be placed. By letter dated September 13, 1984, the Division again responded to the petition, this time taking the position that the proposal could be approved by the Commission by the attachment of certain conditions.[3] The matter was scheduled for consideration before the Commission at

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3. The Division's recommendation that the Commission approve Paxson-Ford's petition was subject to the following conditions:

   1. That the services offered by Paxson in this regard be deemed to be gaming related services and that Paxson file a gaming related service industry license with the Commission pursuant to N.J.S.A. 5:12-92(a);

   2. That Paxson not provide any supervisory personnel, security officers, or surveillance room monitors to any casino licensee;

   3. That any casino licensee utilizing Paxson's services maintain full and exclusive control of those personnel during all times said individuals are employed by that casino;

   4. That any changes to the contract between a) Paxson and casino licensees and b) Paxson and individuals seeking temporary positions be submitted to the Commission and Division and receive prior approval from the Commission before said changes become effective;

   5. That Paxson provide only licensed casino employees to casino licensees;

   6. That Paxson will not be responsible for the training of any casino licensees;

   7. That the casino licensee be responsible for the preparation and filing of all work permits, recordation of gaming hours, notification of license suspensions, revocations and expirations, and the issuance of access badges and credentials.

its December 19, 1984, public meeting. The Commission has determined that the proposal as submitted by Paxson-Ford raises legal and policy concerns which have not been sufficiently addressed by the petitioners and therefore the petition as presented must be denied.

The Paxson-Ford proposal, even as presently constituted, raises significant issues under the Casino Control Act (Act) regarding control over and accountability for the actions of these temporary employees in the very sensitive area of casino operations. It is clear that the Legislature, in enacting the regulatory scheme for casino gaming in New Jersey, mandated a comprehensive system of regulation and control not only over the casino operators but also over their employees. The goal of this regulatory scheme under the Act is the maintenance of a system of strict accountability and controls to insure the integrity of the gaming industry. N.J.S.A. 5:12-1(b)(6) and -99.

The system of regulation created by the Legislature reaches beyond the level of casino and casino employee licensure as set forth in N.J.S.A. 5:12-80 through 92. It also concerns itself with monitoring and tracking the actions of casino licensees and their employees and with allocating responsibility for their actions. Once a licensed individual commences employment within a casino hotel, a system of internal controls focuses on monitoring and accounting for the actions of

that employee. The system involves a complex set of internal control procedures required of the casino licensee and also involves certain statutory provisions, such as N.J.S.A. 5:12-106 which requires work permits to be secured by the casino licensee for its employees. In addition, N.J.S.A. 5:12-99 mandates an approved system of internal and administrative controls, including clear lines of supervisory authority and responsibility. The premise behind this complex system of responsibility is summed up in two interrelated requirements of the Act, accountability and control. See, N.J.S.A. 5:12-70(j), -99 and -130(g). It is clear that the Legislature envisioned a system in which individuals involved in the operation of the casino hotel facility are responsible to the casino licensee. Further, the complete management of the casino must be reposed in a single entity or individual and any casino manager must obtain a casino license. N.J.S.A. 5:12-104(a)(4) and -82(b)(c).

In applying the above concerns inherent within the Act to the Paxson-Ford proposal as presently structured, Paxson-Ford is clearly a co-employer, along with the individual casino, of individuals engaged in the most sensitive area of casino operations, the operation of the games themselves. Paxson-Ford has retained perhaps the most common indicia in employment, that is the payroll function. Paxson-Ford will also be a conduit for the distribution of tips with regard to dealers. Although Paxson-Ford states that it will provide in its contract with the

casino that the individuals placed with the casino are to be considered employees of the casino for purposes of the Casino Control Act, its contract with the individual, as well as its retention of the payroll function, leave it with the indicia of an employer and with an element of control over the employee by virtue of its contract.

Even Paxson-Ford in its analysis of applicable law on this subject admits that the reality of this arrangement will be a co-employment status. It is this co-employment status which is the most troubling element of this proposal.

The elements of accountability and control required by the Act would be seriously diluted with a casino employee reporting to two masters. Under the terms of the proposal, Paxson-Ford would share a "co-employer" status with each of the casino licensees. Having retained the important payroll, benefits and insurance functions and having also placed other conditions and restrictions on its temporary employees in its proposed contracts, Paxson-Ford will exert a degree of control over casino employees. More importantly the casino licensee as a co-employer would of necessity have less control over these individuals. This status of co-employer raises a host of enforcement concerns, the end result of which is to diminish the strict control and accountability of the casino licensee and to confuse the lines of authority to which casino employees must respond.

The question of accountability will also be a major factor should violations occur in the casinos. Presently, should any kind of violation occur involving a casino employee, the casino licensee is held accountable. N.J.S.A. 5:12-129. Injecting Paxson-Ford into the system as a co-employer raises the concern of apportioning responsibility for violations that may occur and will place the Commission in the precarious position of having to allocate blame between Paxson-Ford and the casino licensee. It is not inconceivable that casino licensees may view this situation as an effective avenue to shift responsibility and accountability for violations to Paxson-Ford or to use the temporary status of Paxson-Ford employees as a mitigating factor in any violation that might occur. Conversely, Paxson-Ford might attempt to abdicate responsibility because the services provided by its employees are only temporary. The end result is that the integrity of gaming operations may suffer and the goals of regulation under the Act may thereby be compromised. N.J.S.A. 5:12-1(b)(6). It is our opinion that this serious concern regarding the regulatory authority which we must exert over casino licensees is not sufficiently answered by the contractual provisions proposed by Paxson-Ford in its petition.

The Paxson-Ford proposal raises additional concerns which may have a negative impact upon the conduct of the games and attendant gaming related functions which are the responsibility and function of the casino licensee. Each of the

casinos has adopted its own procedures and training programs for the positions it requires. Significant variations in established procedures may exist in the operations of each of the casino licensees. In addition, there are sensitive job positions, particularly in gaming related areas, which require substantial training time. Adequate training for temporary employees who may be expected to work for periods of only one week at a given casino may be an impractical goal and the brevity of the employment period may serve as a disincentive to the casinos to invest the same time and care in training that is provided to permanent employees. This will have a particularly strong impact in gaming related areas. The use of temporary employees in these sensitive areas may well result in a negative effect on the integrity both of the games and of the employee license tracking system. These concerns run counter to the strict control and accountability and the insurance of integrity in gaming operations required by the Act.

We have addressed in this opinion what the Commission considers to be the major legal, policy and operational concerns that are raised by the Paxson-Ford proposal. There are other issues which raise concerns under the Act and which were enumerated in the prehearing conference order. We therefore do not reach such issues as affirmative action concerns, as we have determined that the dual employer aspect of this proposal is contrary to the Act. Nor do we reach the factual issues raised

by the Division of Gaming Enforcement which were reserved in the prehearing conference order. It is the opinion of this Commission that as the quality and integrity of casino gaming and the elements of strict accountability and control required by the Act will be diminished by this proposal, the peition submitted by Paxson-Ford Associates, Inc. is hereby denied.

NEW JERSEY CASINO CONTROL COMMISSION

E. Kenneth Burdge, Vice Chairman

Carl Zeitz, Commissioner

Joel R. Jacobson, Commissioner

I respectfully dissent from this Opinion.

Walter N. Read, Chairman

Dated: February 22, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 23889-21
AGENCY DOCKET NO. 82-EA-221
OAL DOCKET NO. CCC 6661-83

IN THE MATTER OF THE APPLICATION
OF JOHN E. PEPITONE
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 19, 1984, recommending that the application of John E. Pepitone for a casino employee license be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on October 30, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of December 12, 1984, to reject certain conclusions of law contained in the Initial Decision and to deny the application,

IT IS on this 15th day of FEBRUARY 1985, ORDERED that the following conclusion of law contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected:

1. Mr. Pepitone has established by clear and convincing evidence his good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and -90(b). [Initial Decision at 5].

IT IS FURTHER ORDERED that the application of John E. Pepitone for a casino employee license be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof, and further upon the following finding:

1. By virtue of Mr. Pepitone's conduct concerning his discovery of stolen property in November 1980 and his subsequent failure to make complete restitution to the victim of the theft, he has failed to demonstrate by clear and convincing evidence his good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that, John E. Pepitone is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon John E. Pepitone, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6661-83

AGENCY DKT. NO. 82-EA-221

JOHN E. PEPITONE,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Carl Cavagnaro, Esq., for petitioner (Reuss & Cavagnaro, attorneys)

Ralph Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: September 5, 1984 Decided: October 18, 1984

BEFORE JEFF S. MASIN, ALJ:

John E. Pepitone applied to the Casino Control Commission (Commission) for licensure as a casino employee with a position designation of surveillance employee. By letter of September 23, 1982, the Division of Gaming Enforcement (Division) opposed licensure. Mr. Pepitone requested a hearing on the proposed denial and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone on September 30, 1983 and a prehearing order was issued on October 4, 1983. A hearing was held before Administrative Law Judge Jeff S. Masin on September 5, 1984 at the Vineland City Hall.

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As set forth in the prehearing order, the issues for consideration in this hearing deal with whether Mr. Pepitone possesses the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated by reference in N.J.S.A. 5:12-90b. Further, whether the petitioner engaged in conduct which, although not prosecuted, would constitute a statutory disqualifier under N.J.S.A. 5:12-86c, thus requiring disqualification from licensure, pursuant to N.J.S.A. 5:12-86g. In addition, a further question for determination is whether the petitioner has rehabilitated himself from the adverse affects of the conduct upon which the Division based its objection and whether he should therefore be permitted to be licensed, pursuant to N.J.S.A. 5:12-90h.

EVIDENCE

Prior to proceeding with the testimony at the hearing, the parties entered into several stipulations of fact. These are included in this initial decision and found as facts as if the evidence had been presented in full in the hearing. They are:

(1) Mr. Pepitone filed his Personal History Disclosure Form with the Commission on September 8, 1980.

(2) He was arrested on March 9, 1981 by the New Jersey State Police. The arrest resulted in charges being brought for theft of mislaid property, a violation of N.J.S.A. 2C:20-6.

(3) Mr. Pepitone was interviewed by the Division on September 10, 1981 in connection with his application for licensure.

(4) Mr. Pepitone was granted Pre-Trial Intervention (PTI) on the criminal charges and completed his Pre-Trial Intervention successfully. The charges against him were dismissed by order of the Superior Court, dated August 17, 1982.

(5) On October 5, 1983, Pepitone filed a petition for expungement, pursuant to N.J.S.A. 2C:52-7.

(6) The prehearing conference in connection with this contested case was held before Judge Masin on September 30, 1983.

(7) An Order of Expungement was issued by Honorable George Farrell, J.S.C. on November 18, 1983.

Testimony presented by John E. Pepitone indicates that he is presently 25 years old. On November 25, 1980, which was Thanksgiving morning, he was hunting with a friend at the Millville Game Preserve. After approximately one hour on the premises, Pepitone and his friend, one Michael Robb, came upon a wooded area in which they discovered a safe and a box next to it. In a can next to the safe they discovered $81,000 in cash. They also found considerable jewelry. They took the money and jewelry home and divided the money. At Robb's suggestion they took the jewelry to Dee's store in Delran where they sold it. With the proceeds of their discovery they each bought Datsun 280ZX automobiles for which they paid cash. They also bought a boat together, paying cash for it as well. The automobiles cost Pepitone $14,746 and Robb $13,046. (This information is contained in a newspaper article submitted by Pepitone's counsel with the consent of the deputy attorney general.) The 20 foot boat cost the men $13,505 jointly. The remaining money was spent on various other items and additional sums were placed in area banks.

For reasons which are not all together clear, at some point in February 1981 Robb began to receive phone calls. These became more suspicious and threatening and at one point in late February a telephone call to Robb's house was accompanied by a shot fired at his home. As a result of the threatening calls and the gunshot, the boys decided that they had better advise the authorities of their findings and the threats. They proceeded to do so in March of 1981. At the time, according to Pepitone, they had made no attempts to notify the owner of the property that they had discovered it, although Pepitone did have some reason to believe who the owner was because of other newspaper articles which had been published in the Atlantic City Press concerning the disappearance of a large sum of money and jewelry from Port Norris.

Following the report by the boys of their findings and threats, the Vineland police turned the matter over to the New Jersey State Police. Pepitone and Robb were eventually arrested and charged with the theft of the misplaced property. The PTI and expungement proceedings occurred thereafter.

According to Pepitone, his parents knew about the money which he had found. They advised Pepitone and Robb to look into the matter with the authorities, but at least until the threats neither boy listened to their parents. This was despite the fact that prior to the time that they did report their findings they knew that the money and jewelry were stolen. Indeed, Pepitone advised that at the time of finding the material in the woods he had an idea that it was probably stolen money.

According to the applicant, when the police were advised of the situation approximately $10,000 was left from the proceeds of the findings. Pepitone had about $6,000 to $7,000 of this sitting in the bank. This money was turned over to the authorities and the titles to the automobiles were signed over to the lady in Port Norris from whom the property had been taken. The boat was also turned over to her, or at least the proceeds of the sale of the boat were distributed to her.

Pepitone testified that he never actually voluteered to return the money which he had spent. He did sign an agreement to pay something every month, but is not now paying any money to the owner. He did make somewhere between $50 and $100 in payments at one time. According to counsel, a dispute arose between the owner and the boys as to the exact amount of money lost and the amount found and as a result an agreement which had been prepared concerning restitution was never executed by the victim.

Mr. Pepitone was 22 years old at the time of the finding of the money in November of 1980. He presently lives with his parents and has never been married. He has no dependents. He is employed in the construction field doing masonry and labor work for a builder on a 35 to 40 hour work week. His title is carpenter apprentice. He also works 25 hours a week as a sales representative for 84 Lumber. It is his hope that he will shortly be promoted in that latter position and it would become a full time job. He previously graduated high school and went to technical school for automotive and diesel work. He testified that his eventual goal is to become a dealer, although he has not yet gone to school for that. His community activities are limited by his busy work schedule, but he does play softball in various leagues and is active in a health club.

DISCUSSION

This case presents a situation of a person who, at a reasonably youthful age, found himself suddenly in possession of a large amount of money (the jewelry was sold for

a minimal amount, although no actual value of the jewelry was established during this hearing). Temptation having been placed in his way, Pepitone succumbed and along with his friend used his findings for his own benefit. Had there never been threats made to Robb, it is quite conceivable that the authorities would never have known that Pepitone and Robb had found the money and that the owner would never have received anything back. It was only through the "fortuitous" fact that someone for some reason apparently got wind of the fact that Pepitone and Robb were spending large amounts of cash that the entire incident came to the attention of the police.

It is not entirely impossible to conceive that human nature being what it is that Mr. Pepitone gave into the temptation to expropriate the findings despite his own admitted realization at the time of finding the money that it was probably stolen. This does not denigrate the seriousness of the offense. At the same time, it is quite clear that Pepitone had no connection whatsoever with the actual robbery of the safe from its owner in Port Norris.

Mr. Pepitone has applied for licensure in a relatively sensitive position, that is, surveillance. There is an initial temptation to think that perhaps someone who has done what Pepitone did ought not to be licensed. However, I think that in a situation such as this, where the applicant was, at the time of his misdeeds, young and perhaps inexperienced, and where there has been a reasonable passage of time (almost four years since the finding and about three and a half years since the arrest) that the adverse affects of the incident as they affect the determination of whether to license Pepitone have been diminished. While one can criticize Pepitone for not having done more to return the money to the owner, it appears that there was some good faith attempt to execute an agreement with her as to a procedure for repaying monies and that for whatever reasons, legitimate or otherwise, she failed to execute that agreement. I am unwilling to deny Pepitone's license solely because no additional monies have been repaid to the owner. The automobiles and the boat, or the proceeds of the sale thereof, were returned to the owner. This was in addition to the cash which Pepitone and Robb still had on hand. Given the totality of the circumstances of this case, and in view of the fact that Mr. Pepitone has never been in trouble either before or since this incident, I CONCLUDE that he should be given the benefit of the doubt and that he has established by clear and convincing evidence that at this time he has the requisite good character, honesty and integrity for licensure. While the standard for obtaining licensure, in connection with the good character, honesty and integrity issue, is high, I think that given the nature of the

incident involved, that Pepitone should not be too harshly condemned for his actions. The passage of time seems to this judge to warrant positive action on this application. Therefore, I **CONCLUDE** that Mr. Pepitone's license should be granted. It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 18, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION Lynn A. McDowell
Principal Legal Analyst

Mailed to Parties:

OCT 23 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

On behalf of petitioner:

P-1 Order of Expungement, dated November 18, 1983

P-2 Application for Expungement, filed October 5, 1983

P-3 Letter from Patricia Wild, Deputy Attorney General, dated November 15, 1983

P-4 Personal History Disclosure Form - 2, dated September 8, 1980

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 84-CSI-2
AND 84-EA-46
APPLICATION NOS. 1106-70 AND
43926-21
OAL DOCKET NO. 02410-84
(CONSOLIDATED)

APPLICATION PLAY-A-LONG CORPORATION

FOR A JUNKET ENTERPRISE LICENSE

AND

APPLICATION OF JOAN BIALOSTOK

FOR A CASINO EMPLOYEE LICENSE

(JUNKET REPRESENTATIVE)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on December 24, 1984, recommending that Play-a-Long Corporation be granted a junket enterprise license and Joan Bialostok be granted a casino employee license; and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the applicants having filed a reply to those exceptions; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of February 27, 1985, to reject the initial decision and deny the applications for licensure,

IT IS on this 3rd day of May 1985, ORDERED that the initial decision be rejected and the applicants be denied licensure for failure to establish good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A. 5:12-89(b)(2), -90(b), and -102 based upon the following:

1. Joan Bialostok's admission that in the early 1960's she obtained a liquor license for the SoHo Strawberry, a bar in Greenwich Village, New York, on behalf of an individual whom she believed could not qualify for the license. The ALJ failed to consider this evidence when he concluded that the applicants had established their qualifications for licensure.

2. The participation in the business affairs of Play-a-Long of Milton Bialostok, the applicant's husband, who does not possess the requisite license to engage in junket business with casino licensees. Milton Bialostok was convicted of illegal gambling in 1964 and 1976. In addition, he was both a business and personal associate of one Albert Somna, an individual whom the parties stipulated was known to law enforcement officials as a person of bad reputation with contacts to members of organized crime. Milton Bialostok referred patrons to Play-a-Long and sold a customer list to the corporation. Credible evidence in the record established that Milton Bialostok created the appearance that he was actively involved in the junket activities of Play-a-Long.

IT IS FURTHER ORDERED that Play-a-Long Corporation and Joan Bialostok are prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Play-a-Long Corporation, Joan Bialostok, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2410-84
AGENCY DKT. NOS. 84-CSI-2
and 84-EA-46

PLAY-A-LONG CORPORATION
AND JOAN BIALOSTOK,
Petitioners,
v.
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Phillip L. Paley, Esq., for petitioners (Kirsten, Friedman and Cherin, attorneys)

Lee D. Gottesman, Deputy Attorney General, for respondent, (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 31, 1984 Decided: December 21, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

In this matter, petitioner Play-A-Long Corporation seeks licensure as a casino service industry (junket enterprise). Petitioner Joan Bialostok seeks licensure as a casino employee (junket representative). The Division of Gaming Enforcement has objected to the licensure of the petitoners. The issues to be resolved in this matter are as follows:

1. Whether the petitioners, with specific reference to the nature of petitioner Joan Bialostok's close relationship with her husband, Milton

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Bialostok, have demonstrated by clear and convincing evidence that they have sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the endeavors for which licensure is sought, within the meaning of sections 89b(3), 90b and 102b of the Casino Control Act.

2. Whether the petitioners, with specific reference to the nature of petitioner Joan Bialostok's close relationship with her husband, Milton Bialostok, have demonstrated by clear and convincing evidence that they possess the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2), 90b and 102b of the Casino Control Act.

PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated December 13, 1983, the Division of Gaming Enforcement interposed its objections to the licensure of the petitioners. The petitioners requested a hearing and the consolidated matters were thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on April 4, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq..

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The petitioner, Joan Bialostok, has been married to Milton Bialostok since 1955. They have resided together at their present address in North Woodmere, New York, for the past 21 years. They have three adult children, two of whom live in their home.

The petitioner, Joan Bialostok, has been a community PTA member and has been a member of her temple for 21 years. Between 1955 and 1980, she was a homemaker and had no employment for pay outside of her home. Her husband, Milton Bialostok, is the owner of Burt Bertaine Tire Company in Queens, New York, and he has operated this business since 1960. It is also undisputed that for a short time in the 1970's, Milton Bialostok held a joint interest in Ritmil Automatic Transmissions with Albert Somma, whom Milton had known for 20 or more years.

Milton Bialostok and Albert Somma had been involved together in illegal bookmaking, and it is undisputed that Milton was arrested in 1976 in Suffolk County, New York, on charges of conspiracy in the third degree, promoting gambling in the first degree, and promoting gambling in the second degree. He pled guilty to one count of possessing gambling records in the second degree on March 14, 1977, and he was fined $500.00 (Exhibits R-10 and R-11). Albert Somma was arrested at the same time on the same charges, and he pled guilty to promoting gambling in the first degree on March 14, 1977. Albert Somma was sentenced to a probationary period of five years, to run concurrently with a federal probation, (Exhibits R-12 and R-13). It is undisputed that Albert Somma was subsequently imprisoned on a conviction for extortion. He is now deceased.

Milton Bialostok also has two earlier arrests on gambling-related charges. In 1964, he was charged with bookmaking and he entered a plea of guilty to the downgraded charge of disorderly conduct, for which he was fined $50.00 (Exhibit R-9). In 1975, he was indicted for conspiracy to extort, and this charge was dismissed by a United States magistrate on January 16, 1976, (Exhibit R-9). It is undisputed that the petitioner, Joan Bialostok, has never been arrested or charged with a criminal or disorderly persons offense.

At some time during the mid 1960's, Milton and Joan Bialostok began participating in gambling junkets to Las Vegas, Nevada. They enjoyed these trips, and they went on approximately eight junkets per year. Most of the junkets were to the Dunes Casino Hotel, and Joan Bialostok met and became familiar with the people who ran the junkets and many junket customers. On each occasion, Joan Bialostok participated in gambling.

In 1981, the junkets to Las Vegas were cut back and the Bialostok's began going to the Playboy Casino Hotel, in Atlantic City, New Jersey. Prior to the opening of the Playboy Casino, Joan Bialostok was approached by Playboy's Casino Marketing Director, Ralph Delgatti, whom she had known as a pit boss at the Dunes in Las Vegas. It was Delgatti's responsibility to promote business for the casinos, and he was looking for junket representatives who could produce casino customers interested in wagering at table games in a volume sufficient to qualify them for complimentary services. According to Delgatti, who is now Executive Host at Resorts International, he knew Joan Bialostok to be a very personable woman who was acquainted with and very friendly with many people

from the New York area junkets to the Dunes Casino. Delgatti considered the area to be lucrative and he wanted to attract its business. Joan Bialostok agreed to become a junket representative and she assumed the responsibility of bringing players to the casino, making reservations for rooms, dinner, shows and transportation, and seeing to it that the players were comfortable and happy. According to Mrs. Bialostok, she had nothing to do with obtaining credit for players that she produced for the casino other than to submit their credit applications to the casino credit executives. She did not evaluate the ability of any player to pay back a debt, nor did she offer her judgment on how much credit should be applied for or granted.

In May 1981, Joan Bialostok formed Play-a-Long Corporation, and she is its sole owner and officer. Her husband Milton has no interest in the corporation. It was the undisputed testimony of Mrs. Bialostok that 90% of the players she produced for Playboy were people that she had known from junkets to Las Vegas. In addition, her husband Milton gave her a list of potential players in May 1981, for which he was subsequently paid a consulting fee of $21,000.00, upon the advice and suggestion of the accountant who prepared the corporation's income tax return (Exhibit R-1).

Mrs. Bialostok testified that the only referrals provided by her husband were those names on the list which he gave to her. The only other involvement he had with any players provided to the casino by Mrs. Bialostok was to answer questions which they might have while they were gambling on the casino floor. By May of 1982, Mrs. Bialostok had approximately 800 to 1,000 names on her customer referral list. Approximately 500 of these people actually went on gambling junkets to Atlantic City which were arranged by Mrs. Bialostok.

The petitioner's compensation at the Playboy Casino was based on a pay scale that fluctuated. At one time, the Play-a-Long Corporation received $100.00 to $500.00 per customer, depending on the amount of credit afforded, the amount of wagering and the length of time the person gambled. If a player did not meet the minimum specifications in these areas, no compensation was provided. The scale of compensation provided was subsequently changed to $50.00 to $200.00 per player.

In May 1982, the Playboy management terminated the relationship with Joan Bialostok and the Play-a-Long Corporatio Willard C. Howard, Jr., who is now Vice-President of Casino Operations for the Hilton Casino Hotel, and who was the Vice-

President of Casino Operations for the Playboy Casino Hotel, testified that the casino management felt the payment of commissions was too expensive and that the casino could hang on to the players that had been produced by Mrs. Bialostok without paying her any further commissions.

When her relationship with the Playboy Casino ended in May 1982, the Play-a-Long Corporation became inactive and Mrs. Bialostok was hired as a junket representative by Harrah's Casino Hotel at $69.00 bi-weekly plus commission and a year-end bonus. Her temporary casino employee license expired in February 1983 and that was the last that she worked as a junke representative.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual disputes in this matter concern the business ability and casino experience of the petitioners, and the nature of Milton Bialostok's involvement in the petitioners' junket enterprise. Testifying on her own behalf, petitioner Joan Bialostok stated that she would learn the name of a potential customer and send that person a packet of information about gambling junkets, including a credit application. When a referral would express interest, Mrs. Bialostok would see to it that reservations were made for a room and dinner at the casino hotel and she would see to it that the credit application was processed by the casino credit department. Mrs. Bialostok would also arrange for show reservations, if desired, and she would meet customers at the casino for a drink. It was not considered part of her duty to be on the gaming floor with customers, but she often was.

According to Mrs. Bialostok, the office for the Play-a-Long Corporation was located in her home and she used filing cabinets to maintain her records. She testified credibly that she relied upon an accountant for the preparation of the corporation income tax return and her joint personal income tax return (Exhibits R-1 and R-2). It is undisputed that Joan Bialostok and the Play-a-Long Corporation were financially successful.

Ralph Delgatti testified that when he was Director of Casino Marketing for the Playboy Casino Hotel, Mrs. Bialostok's performance as a junket representative was very satisfactory. He described her as having the type of personality necessary to

produce customers for the casino, and he stated that she was a good craps shooter in her own right. Mr. Delgatti testified that Joan Bialostok had a reputation for good character, honesty and integrity, and he never received any complaints about her performance.

Diane Johnson, the Credit Manager for the Atlantis Casino Hotel, testified that she has known Joan Bialostok for approximately three years, and that they met when Ms. Johnson was a credit executive for the Playboy Casino Hotel. According to Ms. Johnson, Joan Bialostok was well known to the employees of the Playboy Casino Credit Department and she never heard anything adverse concerning Mrs. Bialostok's good character, honesty, and integrity. It was the testimony of Ms. Johnson that she did business only with Joan Bialostok and never with Milton Bialostok. She felt that Mrs. Bialostok fulfilled her obligations as a junket representative, including being available to the casino customers on the casino floor and elsewhere in the casino hotel.

Two customers of Joan Bialostok, Ralph Winer and Murray Dorfman, testified that Mrs. Bialostok was hospitable and efficient and performed her job as a junket representative in an excellent manner. According to Mr. Winer, he never had a problem reaching Mrs. Bialostok for help at the casino. Mr. Dorfman stated that he has been a close friend of the Bialostok's for approximately 20 years and that there is no one he would vouch for more than Joan Bialostok for honesty and integrity.

Tropicana credit executive William Small testified that he knew Joan Bialostok when he worked in the credit department at the Playboy casino. According to Mr. Small, Joan Bialostok arranged room and meal reservations for the customers and she would submit credit applications to be reviewed by the credit department. It was his testimony that Mrs. Bialostok might inform the credit department how much credit the client was after, but she never made any credit recommendations. According to Mr. Small, Joan Bialostok performed her job as a junket representative without complaint from any of the players. Mr. Small stated that he had been under the impression that both Milton and Joan Bialostok had been hired as junket representatives by Playboy. He apparently was under this impression because Milton Bialostok would also bring players to the credit department to be introduced and to have their credit applications processed. However, he was not aware of Milton Bialostok dealing with any reservation arrangements for players.

Hilton Hotel Casino Operations Vice-President, Willard C. Howard, Jr., testified that he met Joan Bialostok when he was Vice-President of Casino Operations for Playboy. According to Mr. Howard, Joan Bialostok "shot craps like a man." He did not know how well she knew the job of junket representative, except that he felt she made too much money on commissions by bringing in so many high-rolling customers. He had never heard anything negative about her good character, honesty and integrity, and there was no reason that he would not hire her now. Mr. Howard explained that he terminated Joan Bialostok from her relationship with the Playboy Casino because she was making too much money as a junket representative, in light of Playboy's financial problems. It was thought that the customers that had been brought in by junket representatives would remain customers even without junket representatives, and thus commissions would not have to be paid.

Mr. Howard also testified that he had been told by a casino surveillance director that Milton Bialostok was "too visible." Mr. Howard had not been under the impression that Milton had been working for Playboy, or that he had been acting as a junket representative, but it was his perception that Milton was too involved. Nevertheless, Milton was permitted to continue to gamble as a casino customer, even after Mr. Howard learned that Milton might be a former bookmaker. In addition, Mr. Howard stated that Playboy's financial problems dictated that Joan Bialostok be terminated as a junket representative regardless of the impression concerning Milton's involvement. Finally, Mr. Howard stated that he had never observed or heard anything derogatory concerning Joan Bialostok's performance or her good character, honesty and integrity.

Tropicana Executive Host, Howard Moskovitz testified that he met Joan Bialostok in April, 1981 when he was a credit executive at the Playboy Casino. He met Milton Bialostok at the same time, and it was his impression that both Milton and Joan worked as junket representatives. Both were off and on the gaming floor, and they both would bring players to the credit department. Milton Bialostok occasionally asked Mr. Moskovitz to arrange reservations and complimentary services for players. However, he acknowledged that it happened all the time that a non-junket representative player, who was a regular customer, would bring in another player and ask for credit arrangements and complimentary services to be provided.

It was the testimony of Mr. Moskovitz that some junket representatives would regularly bring their spouses to the casino, and that Joan Bialostok was the only female junket representative that he could remember. In his opinion, she did her job well and she possessed sufficient business ability. Mr. Moskovitz could identify no problem concerning Joan Bialostok's good character, honesty and integrity.

All of the witnesses in this matter testified with candor and sincerity. Having considered their testimony, I make the following additional **FINDINGS OF FACT.**

1. In 1982, the petitioners had developed a list of 800 to 1,000 potential gaming junket clients, of whom approximately 500 had utilized the petitioners' services to gamble at Atlantic City casinos.

2. Customers of Joan Bialostok felt she did an excellent job, and the only complaint voiced by casino personnel with whom she made junket arrangements was that her performance in bringing players to the casino was so successful that the casino had to pay her too much money in commissions.

3. Milton Bialostok would occasionally be available to answer the questions of players produced for the casino by Joan Bialostok. Although he was known to ask the casino to make credit and complimentary services arrangements for other players, leading to the impression held by some that he worked as a team with his wife, he was not involved with requesting such arrangements for customers of Joan Bialostok.

4. Among her customers and the casino personnel with whom she did business, Joan Bialostok has a reputation for good character, honesty and integrity.

CONCLUSIONS OF LAW

Pursuant to Section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), no person may act as a junket representative unless licensed as a casino employee in accordance with the qualification standards of sections 89 and 90 of the Act, excluding

residency. Similarly, a junket enterprise must qualify under these standards, except residency, established for qualification of a casino employee.

Pursuant to sections 89b(3) and 90(b) of the Act, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the endeavors for which licensure is sought. Pursuant to sections 89b(2) and 90b of the Act, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity.

The Division of Gaming Enforcement contends that the petitioner Play-a-Long Corporation, and its sole owner and operator, petitioner Joan Bialostok, have not established their qualifications for licensure. In essence, the Division contends that Joan Bialostok's husband, Milton Bialostok, is a known gambler and an effective conduit for junket business who has used his wife to profit from a gambling junket enterprise when he is not himself qualified for licensure as a junket representative. In support of its contention, the Division refers to the location of the corporation office in the marital premises, the presence of Milton Bialostok at the casinos where Joan Bialostok was serving as a junket representative, and Joan Bialostok's less than proficient ability to explain the contents of her corporation's income tax return.

The petitioners contend that Joan Bialostok has the requisite experience to be a junket representative and was, in fact, doing the job very successfully and honestly. They further contend that no impropriety was shown concerning the corporate or personal income tax returns and that sufficient business ability does not necessarily require that one possess the skills of an accountant.

The credible evidence in the record clearly demonstrates that the Play-a-Long Corporation and its sole owner and officer, Joan Bialostok, operated successfully and efficiently as a junket enterprise and a junket representative. In addition, the credible evidence in the record clearly establishes that Joan Bialostok has a reputation for good character, honesty and integrity. Thus, the essential question is whether Joan Bialostok's close relationship with her husband, Milton Bialostok, prevents her and the corporation from establishing their qualifications for licensure. I think that it does not. Milton Bialostok is a regular customer of the legalized gaming industry in Atlantic City, and

there is no evidence in the record to establish that there has been any impropriety in his dealings with the Atlantic City casinos. Further, there is no credible evidence in the record to establish that Milton Bialostok has interfered in any way with the conduct of the Play-a-Long Corporation and Joan Bialostok as a junket enterprise and a junket representative. Absent such evidence, the admitted close relationship between Joan Bialostok and her husband is of no moment.

Based upon the foregoing discussion, the findings of fact and the applicable law, I **CONCLUDE** that the petitioners have established, by clear and convincing evidence that they have sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a junket enterprise and a junket representative, within the meaning of sections 89b(3), 90b and 102b of the Casino Control Act. I further **CONCLUDE** that the petitioners have established, by clear and convincing evidence, that they possess the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2), 90b and 102b of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Play-a-Long Corporation and Joan Bialostok for a casino service industry license (junket enterprise) and a casino employee license (junket representative) be granted.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 2410-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 21, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 24, 1984
DATE

Bernadette T. Fazio
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 27 1984
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

For the petitioner:

None

For the respondent:

R-1 1981 corporation income tax return
R-2 1981 personal income tax return
R-3 Junket List dated March 12, 1982
R-4 Junket List, dated April 28, 1982
R-5 Junket List, dated June 9, 1982
R-6 Junket List, dated June 30, 1982
R-7 Junket List, dated November 3, 1982
R-8 Junket List, dated December 29, 1982
R-9 FBI Record
R-10 Arrest Report
R-11 Disposition
R-12 Arrest Report
R-13 Disposition
R-14 Not in Evidence

Witnesses:

For the Petitiioner:

Joan Bialostok,
Ralph Delgatti,
Diane Johnson,
Ralph Winer,
Murray Dorfman,
William Small,
Willard C. Howard, Jr.

For the Respondent:

Howard Moskovitz,
Goree Fleck,
Benjamin Buleri

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-178
OAL DOCKET NO. CCC 4797-83
REGISTRATION NO. 06882-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

JOHN A. RACO,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law with the Commission on December 19, 1983, recommending that the casino hotel employee registration issued to the respondent be suspended for a period of two (2) years; and neither party having filed exceptions or objection to the Initial Decision; and the respondent having offered at the Commission public meeting of February 15, 1984, a letter from the Atlantic County Probation Department attesting that he completed 140 hours of community service as required by his sentence for the April 15, 1983, conviction, and the Division of Gaming Enforcement having waived any objection to the admissibility of the letter pursuant to N.J.S.A. 52:14B-10; and the Commission, after considering the entire record of these proceedings, having

resolved at its public meeting on February 15, 1984, to modify the Initial Decision and revoke the registration,

IT IS on this 12th day of FEBRUARY 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) That portion of the Initial Decision which orders that "...respondent's license [sic - registration] be suspended for a period of two years" is rejected as inconsistent with N.J.A.C. 19:41-8.8. As applied to the facts of this case, N.J.A.C. 19:41-8.8 provides that the respondent is not eligible to apply for or obtain any license (except a casino key employee license), registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from February 15, 1984, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g), or in the case of a casino key employee license, until ten (10) years have elapsed from the date of the disqualifying conviction.

IT IS FURTHER ORDERED that the casino hotel employee registration held by John A. Raco be and hereby is revoked based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, John A. Raco is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon John A. Raco, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4797-83

AGENCY DKT. NO. 83-178

STATE DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

JOHN A. RACO,

Respondent.

APPEARANCES:

William E. Mountford, Jr., Deputy Attorney General on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

John A. Raco, respondent, appeared Pro Se

Record Closed: November 17, 1983 Decided: December 16, 1983

BEFORE **SOLOMON A. METZGER, ALJ:**

This matter concerns a complaint filed by petitioner with the Casino Control Commission seeking to revoke respondent's registration as a casino hotel employee, pursuant to N.J.S.A. 5:12-1 et seq. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The background facts are undisputed. Respondent was arrested on September 17, 1982, and later was indicted by an Atlantic County Grand Jury on charges of burglary in violation of N.J.S.A. 2C:18-2, criminal mischief in violation of N.J.S.A. 2C:17-3a(2), and theft by unlawful taking in violation of N.J.S.A. 2C:20-3. On

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March 31, 1983, he was convicted of burglary and criminal mischief and found not guilty of theft by unlawful taking. Respondent was sentenced for the burglary conviction to probation for a period of one year, with the condition that he serve one day in the county jail, pay restitution to the victim in the amount not covered by insurance, perform 200 hours of community service, and pay a fine of $1,000. For the conviction on charges of criminal mischief, he received one year's probation running concurrently and was ordered to pay $50 to the Violent Crimes Compensation Board.

Petitioner presented two issues, first, whether respondent committed the burglary while in possession of a deadly weapon, elevating the offense for purposes of the Casino Control Act, N.J.S.A. 5:12-86(c)(1) and (g), to the level of a statutory disqualifier and, second, whether the two convictions, even without a second degree burglary finding, make respondent's continued registration inimical to the policies of the act and to casino operations. N.J.S.A. 5:12-86(c)(4). From respondent's perspective, there is the additional issue of rehabilitation. N.J.S.A. 5:12-91(d).

In addition to submitting the record of respondent's convictions, petitioner placed in evidence the police report filed in connection with these offenses. That report forms the basis of petitioners proofs that a deadly weapon was used in connection with the burglary.

At 1:33 a.m. on the evening in question, a telephone complaint was made with the Margate Police department by a Mr. Timothy Kertz reporting a prowler in the back yard of 301 North Delavan Avenue. When the police arrived, Mr. Kertz indicated that the suspect had just fled in a dark van. According to the report, Mr. Kertz informed the officers that he had seen the suspect throw an object into the shrubs near the house. After they were satisfied that the area was secure, the officers located a screwdriver in the shrubs. They then left. At approximately 1:45 a.m., Mr. Kertz again telephoned the police department, stating that the same van had returned and was parked near 301 North Delavan Avenue. Officers were again dispatched and this time they observed respondent "tampering with the right front tire of a Toyota in front of 304 N. Clermont." After seeing the patrol car, respondent began to flee in between houses. At one point during the chase which ensued, one of the officers came face to face with respondent at a distance of about thirty feet. He called to respondent to halt, and the report indicates that he observed a metallic object in respondent's right hand. Respondent again fled. The chase

continued for a bit longer, and eventually the officers cornered respondent and placed him under arrest. Respondent resisted handcuffing and had to be dragged to the street before being placed in a patrol car. The report then indicates that after he was advised of his constitutional rights, one of the officers asked whether he had been the only one involved and respondent replied as indicated in the report, "Yeah, I'm the only one involved."

After transporting respondent to police headquarters, the officers returned to the scene and found that the vehicle where they had first observed respondent had been vandalized and burglarized. "All four tires were punctured and the vehicle had been entered, the upholstery slashed, tape deck and other fixtures such as headlight switch, etc. were torn out of the vehicle." The vehicle is registered to a Mr. Abe Fixler residing at 307 North Clermont. Mr. Fixler was awakened and questioned. He indicated that respondent was someone who had gone out with his daughter.

The officers also discovered that a second vehicle had been damaged. This car was located in the driveway at 304 North Delavan Avenue some ten to fifteen feet from the Fixler vehicle. Its tires had been punctured. It was registered to a Marilyn L. Casel. She was awakened and questioned but did not know respondent.

The officers then retraced respondent's flight from the point where they first observed him. They found the rear license plate of the Fixler vehicle crumbled up, a cassette tape that had been removed from the Fixler vehicle, and alongside 301 North Delavan found "...the knife Raco was carrying when he came over the fence (meat carving knife with 9" blade)." The report also indicates that Mr. Kertz apparently told the officers that he observed respondent getting rid of the knife. There were other pieces of the interior of the Fixler vehicle scattered about the area. Additionally, the top of the car had been dented and scratched, the dashboard destroyed, and some clothing, tapes, and a few dollars were missing.

Shortly following respondent's release at police headquarters, Mr. Fixler telephoned the station and reported that he was receiving harassing telephone calls from respondent. An officer was detailed to respondent's home, informing him to cease the telephone calls or further complaints would be filed.

Respondent is twenty years old. He testified in his own behalf and denied any involvement in these crimes. He stated that he had been driving in the vicinity of his girlfriend's house, apparently thinking of a way to see her so that they could resolve an argument that they had earlier that evening. He observed someone inside her car. As he approached to investigate, two males ran away and just then the police appeared. He testified that he didn't know they were police at first, and he started back to his van. When they instructed him to stop, he ran away. He did admit that he resisted arrest once he was caught. He denied having a knife.

Respondent testified that he has paid the fines, and restitution required by his sentence, and has performed 100 of the 200 hours of required community service. He is now employed at Resorts International as a Bar Porter.

Respondent also presented three character witnesses. Each testified to knowing him as a friend or friend of the family. They all found the episode for which he was convicted to be entirely out of character. One of these witnesses, Dr. Edwin H. McKnight, testified that he had been told by respondent's parents that the Fixler family was not pleased with the relationship that respondent had with their daughter, and that they sought to discourage it.

This makes up the substance of the record. The first of the Division's charges is that though respondent was convicted of burglary in the third degree, in fact he used a deadly weapon in the commission of the crime and that for purposes of the Casino Control Act, this is sufficient to establish burglary in the second degree creating a statutory disqualifier pursuant to N.J.S.A. 5:12-86.c(1) and g. I believe that petitioner has established by a preponderance of the credible evidence that respondent was in possession of a knife during the commission of these crimes. The police report indicates that one of the officers saw respondent with what he believed was a knife and Mr. Kurtz also reported seeing a knife. The damage done to the automobiles was extensive (there is a representation in the record that it was in the vicinity of $2,000) and the punctured tires and slashed upholstery lend credence to these observations. We must recall that the police had already found a screwdriver after their initial visit to the scene and at that time there had been no evidence of tampering. The report of the metallic object in respondent's hands and the damage to the two vehicles come only after they responded to the second complaint.

Though respondent denied any involvement in the incident, we cannot inquire beneath the convictions. He made no other defense.

While petitioner has in my view established that the burglary was committed with a knife, even if that were not so, the combination of convictions in light of the extensive damage to the two vehicles tends to support a finding that respondent's continued employment in the casinos would be inimical to the policies of the act and to casino operations.

Respondent is entitled to establish that he has been rehabilitated pursuant to N.J.S.A. 5:12-91d. There are a few factors which argue in his favor. He has paid his fine, made restitution to the parties in the amount not covered by insurance, and has completed 100 of the 200 hours of community service to which he was sentenced. He has also been working in a casino and has had no difficulty. This does begin to show rehabilitation. I believe, however, that insufficient time has passed to fully satify this concept and if there were no other factors to consider, petitioner would be entitled to its remedy.

There is however, a further element in this case which is related to the question of rehabilitation but which arises out of the facts and circumstances of this incident. Respondent has never been arrested or convicted of a crime before and the testimony of his character witnesses to the effect that this situation was something of an anomaly for him, is credible. As respondent denied his guilt, he was in no position to explain away his behavior of that evening. Yet, despite the convictions and the discussion to this point, it appears unlikely that one setting out to commit burglary or to become involved in reckless behavior causing such extensive damage would by chance choose as one of the vehicles involved the car of his girlfriend's father. It seems clear therefore, that Dr. McKnight's explanation that respondent was having difficulty with his girlfriend's family and the fact that he had had an argument with her that evening bear on this incident. Thus, when we think of rehabilitation in this case, we would do better to think of it as a problem of respondent's learning to control such acts of rage then of rehabilitation from criminal conduct.

Seen in that light I am not convinced that respondent deserves to have his license revoked. The case may present an appropriate opportunity to invoke the provisions of N.J.S.A. 5:12-91e, which permits the Commission to waive disqualification criteria in the interest of justice. I believe that a lesser period of suspension than is

imposed by a full revocation would be proper so long as it is sufficient to allow us to see whether respondent has been rehabilitated both for his crimes and in the sense that I have used it in the previous paragraph.

Based on the foregoing, it is my **CONCLUSION** that respondent's license be suspended for a period of two years. It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

12/14/83
DATE

Solomon A. Metzger
SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

19 DEC 1983
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Dec. 21, 1983
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NOS. 83-86; 83-87;
83-88

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

BERNARD W. RESNIK, ROBERT GERALD PARKER, GARY JOHN SMITH, ERVIN W. SISKA, JOHN F. GROOM AND ANTHONY PETER LEONE,

Respondents.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

LARRY JEAN WOOLF, CHARLES HORTON, BERNARD W. RESNIK AND LUCIA A. VAN PELT,

Respondents.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

JOSEPH S. MANCARI,

Respondent.

COMMISSION DECISION:
MOTIONS TO DISMISS
COMPLAINTS

Appearances: J. Michael Nolan, Jr., Esquire (Pitney, Hardin, Kipp & Szuch), for respondents Larry Jean Woolf and Lucia Van Pelt.
Brian J. Molloy, Esquire (Wilentz, Goldman & Spitzer), for respondent Charles Horton.

Charles A. Matison, Esquire (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim), for respondents Bernard W. Resnik, Robert Gerald Parker, Gary John Smith, Ervin W. Siska, John F. Groom, Anthony Peter Leone, and Joseph S. Mancari.

Kevin F. O'Toole, Deputy Attorney General, for Division of Gaming Enforcement.

Nancy Q. Shickler, Assistant Counsel, for the New Jersey Casino Control Commission.

PROCEDURAL HISTORY

The Division of Gaming Enforcement (DGE) filed complaints with the Commission against the above respondents on April 4, 1983. Those complaints allege violations of the Casino Control Act, Commission regulations and the Certificate of Operation held by Boardwalk Regency Corporation. The respondents were casino key employees employed by Boardwalk Regency Corporation in May 1981, and were alleged to have participated in a series of incidents which also formed the basis of an earlier complaint against the casino licensee, State v. Boardwalk Regency Corporation, Docket No. 81-82 (1983). After appropriate hearings, the complaint against the casino licensee was resolved by the Commission in January 1983 with the imposition of monetary civil penalties totalling $257,000.

After complaints and answers were filed in the instant matters, the Commission transmitted the three cases to the Office of Administrative Law on June 22, 1983, with the request that the matters be consolidated for purposes of a hearing. Soon after transmittal, an Administrative Law Judge (ALJ) scheduled a prehearing conference in part to address the affirmative defenses raised in answers filed by the respondents which included laches, lapse of the statute of limitations, violations of the respondents' due process rights and estoppel. However, the conference was carried after the DGE and respondents advised the ALJ that they were entering settlement negotiations. On May 15, 1984, the OAL filed initial decisions concluding that the matters would no longer be contested cases and that the parties should comply with the terms of the executed settlement agreements, subject, of course, to review and acceptance by the Commission. At the public meeting of June 27, 1984, the Commission unanimously rejected all the recommended settlement agreements. During the Commission's discussion of the settlements, all five Commissioners indicated their dissatisfaction with the restrictions to be imposed on the Commission's ability to review the subject matter of the complaints upon renewal of the respondents' licenses and with the absence of a sufficient factual recitation to evaluate the adequacy of the proposed sanctions. The parties were

advised that the Commission wished this matter to be handled expeditiously and directed them either to return with new stipulation agreements or to litigate the complaints.

The present motions to dismiss were filed on February 27, 1985 (respondents Woolf and Van Pelt), March 6, 1985 (respondent Horton) and March 11, 1985 (respondents Resnik, Parker, Smith, Groom, Leone, Mancari and Siska). The Division of Gaming Enforcement filed a brief in opposition to the motion on March 25, 1985. At the request of the Commission staff, the Division filed a supplemental memorandum of law on March 28, 1985. Counsel on behalf of respondent Horton filed replies on March 25, 1985 and April 1, 1985.

The Commission heard argument on the motions at its public meeting of April 3, 1985, and at its meeting of April 17, 1985, announced its decision denying the motions. Thereafter, on May 9, 1985, respondents Woolf and Van Pelt filed a motion for leave to appeal with the Superior Court, Appellate Division. Respondent Charles Horton joined the motion for leave to appeal on May 13, 1985. The remaining respondents joined the motion before the Court on May 14, 1985.

EFFECT OF DELAY

The respondents in these matters have requested that the Commission dismiss the complaints filed against them

because of the delay between the time of the alleged violative conduct and the filing of the complaints, a period of some twenty-three months. The respondents claim that this delay, coupled with the time that has passed since the institution of the complaints against them, violates the principles of fundamental fairness applied to administrative proceedings.

Administrative proceedings on contested matters are required to conform with principles of fundamental fairness. In re Arndt, 67 N.J. 432 (1975). However, the required procedural standards are more flexible and less formal than those imposed in court proceedings. In re Kallen, 92 N.J. 14, 26 (1983). Therefore, the Commission is required to determine if principles of basic fairness have been violated because of the delays occasioned in these cases. We find that the respondents have failed to demonstrate actual prejudice to the preparation or presentation of their cases as a result of the delays encountered in bringing and processing these complaints. In the absence of such prejudice, we conclude that the public interest in the proper regulation of the sensitive casino industry compel the adjudication and final disposition of these matters on their merits.

The respondents argue that the standards applied in civil forfeiture cases, as articulated in United States v.

$8,850, 461 U.S. 555 (1983) and State v. One Ford Van Econoline, 154 N.J. Super 326 (App. Div. 1977), certif. den., 77 N.J. 474 (1978), are the appropriate framework to analyze the requirements of fundamental fairness applicable to the instant cases. Further, the respondents cite In re Arndt, supra, as controlling precedent for the instant motions.

Initially, we find that the forfeiture cases are not dispositive of the issues in these cases. The respondents have not been deprived of any property right comparable to the seizure of goods or money in a forfeiture action. In section 1(b)(8) of the Casino Control Act (N.J.S.A. 5:12-1(b)(8)), the Legislature specifically precluded the creation of any property right in any license issued by the Commission. Indeed, none of the respondents has suffered a suspension or any discontinuance of the licensure privilege and the legal ability to work in the casino industry. Moreover, the respondents have not been subject to such restraints on liberty as may result from a public accusation. United States v. Marion, 404 U.S. 307, 321 (1971). The fact that respondents were subject to a lengthy investigation, with the expense, disruption and stress that may accompany it, does not constitute a formal charge. United States v. MacDonald, 456 U.S. 1, 9 (1983); United States v. Marion, supra, at 320.

Nor do we find In re Arndt, supra, to be controlling. There the New Jersey Supreme Court vacated an order suspending the appellant's driver's license because of unjustified pre- and post-hearing delays by the Director of the Department of Motor Vehicles totalling approximately 30 months. The Court read the enabling statute to require the Director to institute suspension proceedings within a reasonable time after notification of refusal of a breath chemical test. The Court found the proceedings as a whole were conducted in unfair disregard of the rights of the motorist. In the Court's view, the delays contravened the public policy and interest in the prompt removal of unfit drivers from the highways.

The driver's license suspension procedures are mandated after a motorist refuses to submit to the breath chemical test. The Director is obligated to suspend the motorist's driver's license upon receipt of a properly sworn report from the arresting officer, unless the driver requests a hearing. The sole issue at the hearing is whether the arresting officer had probable cause to believe that the motorist was driving his vehicle while under the influence of intoxicating liquors. See N.J.S.A. 39:4-50.4. The license suspension proceeding serves to supplement the parallel criminal proceedings; drivers are encouraged to take the breath test, upon pain of losing his or her license for six

months. The results of the test may then be used in the criminal proceeding. Similarly, as a result of a conviction on the criminal charge, the judge has the power to suspend the motorist's driving privileges. Further, the criminal action may be maintained without regard to the administrative suspension matter. Thus, the criminal and civil proceedings originate from the same incident and run concurrently to achieve the same valid law enforcement objectives.

The administrative complaints before us do not present an analogous model. One of the Commission's essential functions is to ensure the continued public confidence in the integrity of the regulatory process and of casino operations. See N.J.S.A. 5:12-(1)(b)(6), -63. These complaints raise serious allegations concerning individuals who hold key employee licenses, the highest employee credential authorized by the Act. See N.J.S.A. 5:12-9, -89. It is the Commission, and no other body in New Jersey, which determines the qualifications of those who wish to participate in the casino industry. Thus, while Arndt may be instructive for the proposition that ministerial actions intended by the Legislature to serve as prompt, initial responses to societal problems should be processed without unexplained and unreasonable delay, it should not be controlling in the instant context.

The decision in Arndt has not been interpreted to find that delay alone is sufficient to obviate otherwise valid proceedings. In a subsequent case, In re Garber, 141 N.J. Super. 87, certif. den. 71 N.J. 494 (1976), the Appellate Division found that the decision in Arndt is consistent with the general rule that delay alone will not generally affect the validity of an administrative determination where no prejudice is shown. 141 N.J. Super. at 91. This decision has been cited with approval by the Supreme Court in a subsequent administrative law case, In re Kallen, 92 N.J. 14, 27 (1983).

The respondents argued that the Casino Control Act mandates prompt action by the Division in investigating and prosecuting alleged regulatory violations and that, in this instance, the Division has disregarded that requirement to the detriment of their rights. The Division of Gaming Enforcement is established as a separate agency under section 55 of the Act. N.J.S.A. 5:12-55. Pursuant to section 76, N.J.S.A. 5:12-76, the Division is directed to fulfill its responsibilities "promptly and in reasonable order." By so directing, the statute does not place a specific time frame on the Division's actions. The Legislature could easily have established such a limitation had it chosen to do so. Moreover, we do not read section 76 as creating additional substantive rights which may be asserted by particular

respondents before this Commission. Rather, any respondent may contend, as the present movants have, that they are entitled to the extraordinary remedy of dismissal under the same criteria generally applicable to such administrative proceedings.

Applying the analytical framework to the facts as alleged in these motions, we find that the respondents have not demonstrated the necessary prejudice to warrant dismissal of the complaints. As noted above, the respondents have not had their licenses suspended and have continued to work in the industry since May 1981.[1] Furthermore, we reject any suggestion that the Commission has prejudged these matters by virtue of having decided the prior case against the casino licensee. In alleging prejudice on the part of this administrative tribunal, the respondents have the burden of overcoming "a presumption of honesty and integrity in those serving as adjudicators." Withrow v. Larkin, 421 U.S. 35, 47 (1975). Without a showing to the contrary, state administrators are presumed to be persons of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances. See United States v. Morgan, 313 U.S. 409, 421 (1941). No Commissioner has exhibited the personal involvement or prejudgment which would necessitate recusal. See, e.g., In

1 All respondents with the exception of Mr. Mancari have filed timely renewals of their casino key employee licenses. Final action on these renewals have been deferred until the existing complaints are resolved.

re Allstate Insurance Company, 161 N.J. Super. 564 (App. Div. 1978). The determination of these contested cases will be reached solely upon the record as developed at a hearing or as presented in a stipulation of settlement.

At the very heart of the Casino Control Act is the maintenance of the public confidence and trust in the credibility and integrity of the regulatory process and in casino operations in New Jersey. To further public confidence and trust, the Commission is required to scrutinize and, if required, exclude not only persons with criminal backgrounds, but those who lack the necessary business judgment or probity or who engage in improper activities in the conduct of casino gaming. N.J.S.A. 5:12-1(b)(7). Because of the public's vital interest in casino operations, participation in this industry has been deemed a revocable privilege. N.J.S.A. 5:12-1(b)(8).

The regulatory violations alleged in these complaints are serious. If proven, they are more than mere technical improprieties. There is a strong public policy in having these matters resolved in a public forum promptly and completely. While all parties concerned would undoubtedly have desired a speedier resolution of this matter, we cannot say at this juncture that the proceedings as a whole have been conducted with unfair disregard of respondents' rights. See In re Arndt, supra, 67 N.J. at 437. We are, however,

sensitive to the concerns raised by the respondents in these motions and believe they can be allayed by having the matters tried in the first instance before an administrative law judge in the Office of Administrative Law.

Therefore, for the reasons stated, we deny the motions to dismiss in these complaints and remand the matters to the Office of Administrative Law for the conduct of a hearing on an expedited basis.

WALTER N. READ

E. KENNETH BURDGE

CARL ZEITZ

JOEL R. JACOBSON

May 15, 1985
DATE

DISSENTING OPINION OF COMMISSIONER ARMSTRONG

I must respectfully dissent from the opinion of my fellow Commissioners.

The issue presented in this matter requires a delicate balancing of the right of a litigant to fundamental fairness during an administrative proceeding versus the strong public policy expressed in the Casino Control Act (Act) of preserving the integrity of the regulatory process which may necessitate the imposition of sanctions against corporate entities and individual licensees who violate the Act.

N.J.S.A. 5:12-76 requires the Division of Gaming Enforcement (Division) to promptly prosecute before the Casino Control Commission (Commission) all proceedings for violations of the Act or regulations. I support the proposition that the Division is accorded under the Act broad discretion in order to fulfill its investigative and regulatory functions. Moreover, licensees and registrants should not be drawn into violation proceedings as respondents, stand publicly accused and have their credentials placed in jeopardy unless the Division is reasonably certain that the respondents have been implicated in violative conduct.

In this case, the complaint against the corporate entity (BRC) was filed promptly in June 1981 as a result of incidents which occurred at BRC in May 1981. However, there was no justification to delay the filing of the complaints against the

individual respondents allegedly involved in the BRC incident. After the Division took the respondents' depositions in August 1981, there was no further investigation of the respondents' involvement in the May 1981 incidents at any time subsequent to the depositions or the filing of the complaints in April 1983.

The Commission's final decision in the BRC matter adopted the findings of fact of the Administrative Law Judge (ALJ). While the Commission increased the sanctions imposed against BRC by the ALJ, the initial and final decisions concluded that the sanction was imposed against BRC due to violations of the Act committed by some or all of the respondents. The BRC final decision is replete with references to specific violations of the Act by the individual respondents, which the Commission determined justified the $257,000 fine.

To permit the filing of complaints against the individual respondents after the final decision was rendered constitutes under the unique facts of this case, blatant prejudice. My concern is not with the length of the delay prior to filing the complaints against the respondents, rather, it is the timing of the filing of the complaints which creates fundamental unfairness. The prejudice to respondents results from the following.

First, the depositions of the respondents were taken in August 1981, without the right to legal counsel. This fact alone would not constitute sufficient grounds for dismissal. The Division was in the midst of conducting an investigation

and therefore, the presence of counsel was not required at the depositions. See, In re Tufi Application, 182 N.J.Super. 631, 643 (App. Div. 1981).

However, I am disturbed by the fact that the depositions were taken without counsel present when coupled with the subsequent actions by the Division. At the BRC hearing before the ALJ, the depositions were introduced into evidence by the Division and several of the respondents were called to testify by BRC, their employer. They had no right to cross-examine witnesses testifying adversely to their interests since they were not parties to the proceeding.

The final decision in the BRC matter unquestionably concludes that the individual respondents' actions violated the Act to such a serious extent that BRC was fined $257,000. The sanctions imposed on BRC resulted directly from findings of violations committed by respondents, among others, as employees of BRC, acting on behalf of the corporation.

Conceding that the proceedings against the respondents will now advance, the factual findings in the BRC initial and final decisions cannot legally or logically be treated as though they do not exist. The fact that a plenary hearing will be held before an ALJ does not cure the prejudice, since the final decision will be rendered by the same Commission which has previously determined that the respondents violated the Act.

The respondents' alleged violative actions have already been judged and condemned at a proceeding during which they were unrepresented by legal counsel and had no right to cross-examination. I am not suggesting that my fellow Commissioners are biased against or have prejudged any of these individuals. I do think that because of the manner in which this case has developed, the Commission is bound in some manner by the prior findings in the BRC case, to the detriment of these respondents. Additionally, one must query as to the legal ramifications of the possibility of factual findings resulting from the prosecution of respondents, which findings may be inconsistent with the findings in the BRC Final Decision. Can BRC request a refund of a portion of the $257,000 sanction if new factual findings reveal that fewer violations of the Act were committed by respondents? Can this Commission logically conclude that the facts are now different?

In re Kallen, 92 N.J. 14, 25 (1983), affirmed that administrative hearings in contested cases must operate fairly and in conformity with due process. Respondents' rights to fundamental fairness have been violated in this case. I would grant the motion to dismiss.

VALERIE H. ARMSTRONG
Commissioner

May 15, 1985
Date

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION NO. 142408

IN THE MATTER OF THE APPLICATION OF RESORTS INTERNATIONAL HOTEL, INC., FOR A DETERMINATION OF INVESTMENT AND CONTRIBUTION CREDIT PURSUANT TO N.J.S.A. 5:12-144 AND N.J.A.C. 19:54-2

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing on May 21, 1984, of a petition by Resorts International Hotel, Inc. ("Resorts") for a determination of the eligibility of investments and allowability of contributions pursuant to N.J.S.A. 5:12-144 and N.J.A.C. 19:54-2, said petition having been amended on June 5 and July 31, 1984; and the Commission having permitted the Public Advocate to intervene in the contested case portion of this matter by a ruling rendered on October 10, 1984; and the parties to this action, including Resorts, the Division of Gaming Enforcement and the Public Advocate having appeared at a prehearing conference on November 1, 1984, at which the legal and factual issues at bar were defined; and the Commission having considered the written arguments submitted by the parties as required by the Prehearing Conference Order; and the Commission having requested, received and considered the comments of interested persons;

and the Commission having heard and considered testimony and oral argument in this matter on November 30, December 3, 4 and 6, 1984; and the Commission having orally announced its determination at its public meeting of December 12, 1984;

IT IS on this 7th day of January, 1985,

ORDERED that the determinations of eligibility and allowability requested by Resorts be resolved as follows:

1. As to the investments claimed in Resorts' Hotel, the Bradway addition, Resorts North and Resorts' parking garage, these investments are ineligible for investment credit since they consist of improvements to Resorts' own casino hotel complex and related facilities, and thus are not investments in the public interest as contemplated by Section 144 of the Casino Control Act ("Act) and the Commission regulations; moreover, these investments are also ineligible pursuant to the provisions of N.J.A.C. 19:54-2.13(a) (2) and (3).
2. As to the investments claimed in the Terrace and Seaside Motels, these investments, made for Resorts' own benefit in connection with the

operation of its casino hotel facility, actually decreased the number of motel rooms available to the Atlantic City hospitality industry and thus are not in the public interest as contemplated by Section 144 of the Act and the Commission regulations. Further, these investments are ineligible pursuant to the provisions of N.J.A.C. 19.54-2.13(a)(2), (3) and (4).

3. As to the investments claimed in the Kaltman Warehouse and the warehouse at 611 Atlantic Avenue, these investments constitute acquisitions or improvements made for the benefit of Resorts' own casino hotel operations; they do not result in any significant independent contribution to the public interest as contemplated by Section 144 of the Act and the Commission regulations. Further, these investments are ineligible pursuant to N.J.A.C. 19:54-2.13(a)(2) and (4). As to Resorts' improvements to the 611

Atlantic Avenue property, these investments are additionally ineligible because they are not equity investments in real property as required by Section 144(a) of the Act, but rather leasehold improvements which will revert to the owner of the building upon termination of Resorts' noncapitalized leasehold interest.

4. As to the investments claimed in the Steeplechase and Steel Piers, Resorts has not only failed to significantly improve these piers but has substantially removed them from public use as recreational facilities. Resorts' acquisition of these properties, which were once crucial elements of the recreation and tourist industry in Atlantic City, has not been in the public interest as contemplated by Section 144 of the Act and the Commission regulations. Further, these investments are ineligible investments

pursuant to N.J.A.C. 19:54-2.13(a)(4).

5. As to the investments made in four housing projects located outside Atlantic City: (a) The Sea Pines and Lake Lenape projects were never actually developed and have been abandoned by Resorts. The public interest as contemplated by Section 144 of the Act and the Commission regulations has not been served in any way by Resorts' investments in these projects. Further, these investments are ineligible pursuant to N.J.A.C. 19:54-2.13(a)(4).

(b) The investments in Country Place and Pinnacle have resulted in the construction of approximately 320 condominium or townhouse units. These investments are eligible for investment credit because they do meet, to a limited extent, the public interest as contemplated by Section 144 of the Act and the Commission regulations. The exact amount of investment credit to be accorded

Resorts must await an audit of the funds expended, and such investment credit shall be limited to the cost of real property and real property improvements associated with those units actually constructed. Based on the foregoing, and subject to any subsequent audits and adjustments, Resorts has satisfied its 1979 obligation to make 50% of its Section 144 investments in municipalities other than Atlantic City.

6. As to the "investment" claimed for improvements made to the sewerage collection system of the Atlantic City Sewerage Company, this expenditure is not an "investment" within the meaning of Section 144, because Resorts does not maintain any equity interest in the improvements. Further, because Resorts will be a primary beneficiary of these new sewer improvements, because Resorts intends to seek recoupment of its payments to the Sewerage Company to the greatest

extent possible, and because Resorts made the payment under protest and legal compulsion, Resorts' payments to the Sewerage Company are ineligible for credit as a "contribution" pursuant to Section 144 of the Act and the Commission regulations. Further, these payments are not eligible for a tax credit either as an investment or a contribution because Resorts was obliged as a condition of its CAFRA permit for its parking garage, a related facility under Section 84(e) of the Act, and thus as a condition of its casino license, to enter into an acceptable agreement with the sewerage authority to fund these improvements.

7. As to the "investment" claimed for the purchase by Resorts, through the Resorts International Foundation, of $1,000,000 of mortgage revenue bonds from the Atlantic City Housing Authority, this expenditure is not an "investment" within the meaning of Section 144 since the purchase of

bonds is not an equity investment in real property or real property improvements. Further, this expenditure may not be credited as a "contribution" to the Resorts International Foundation because the Foundation, by virtue of its affiliation and common control with Resorts, is not an authorized recipient of contributions from Resorts International Hotel, Inc., under N.J.A.C. 19:54-2.25(b).

8. As to Resorts' request for credit for approximately $2,000,000 worth of contributions made to various charitable and nonprofit organizations between 1980 and 1983, Resorts has failed to meet its burden of establishing that any of these contributions best serve the public interest and either directly relate to the tourist industry of this State through the planning, improvement or operation of public facilities, or directly relate to the improvement of

the health and well-being of the people of this State through the planning, improvement or operation of a facility, project or program approved by the Commission.

IT IS FURTHER ORDERED that, if Resorts fails to meet its full 2% investment obligation within the statutory five year period expiring on December 31, 1984, or fails to satisfy its obligation to make 50% of all required investments or contributions in Atlantic City and 50% in any other municipalilty within the State, Resorts shall, pursuant to N.J.S.A. 5:12-144e, owe investment alternative tax in the amount of 2% of Resorts' gross revenues for calendar year 1979, or $4,645,797.

IT IS FURTHER ORDERED that copies of this Final Order be served upon Resorts International Hotel, Inc., the Division of Gaming Enforcement and the Public Advocate within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

By: _____
Walter N. Read
Chairman

Dated: January 7, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION REF. NO. 142408

IN THE MATTER OF THE APPLICATION :
OF RESORTS INTERNATIONAL HOTEL, :
INC. FOR A DETERMINATION OF :
INVESTMENT AND CONTRIBUTION :
CREDIT PURSUANT TO N.J.S.A. :
5:12-144 and N.J.A.C. 19:54-2 :

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chairman
Joel R. Jacobson, Vice-Chairman
Carl Zeitz, Commissioner
E. Kenneth Burdge, Commissioner
Don M. Thomas, Commissioner

APPEARANCES:

For Resorts International Hotel, Inc.:

Joel H. Sterns, Esq.
Mark D. Schorr, Esq.
Loraine Schewior, Esq.

For the Division of Gaming Enforcement:

Richard Merkt, Deputy Attorney General

For the Department of the Public Advocate:

David G. Sciarra, Assistant Deputy Public Advocate

For the Casino Control Commission:

Robert J. Genatt, General Counsel
David C. Missimer, Senior Assistant Counsel
Richard Dana Krebs, Assistant Counsel
Barbara P. Lampen, P.P., Chief, Policy, Planning & Development
Amy B. Lempert, P.P., Policy & Planning Specialist

I. BACKGROUND AND PROCEDURAL HISTORY

Applicant Resorts International Hotel, Inc. ("Resorts") is the holder of a plenary casino license issued by the Casino Control Commission ("Commission") pursuant to N.J.S.A. 5:12-80 et seq. and has conducted casino gaming operations in its Atlantic City casino since May 26, 1978.

Subsections b. through f. of section 144 of the Casino Control Act ("Act"), N.J.S.A. 5:12-1 et seq., comprise what are commonly referred to as the investment alternative tax provisions of the Act. N.J.S.A. 5:12-144 b. through f. (hereafter "section 144"). Section 144 requires any casino licensee whose gross revenues from gaming in a given calendar year exceed its cumulative investments in New Jersey as of that year to either pay an additional 2% gross revenue tax (referred to as the investment alternative tax) or make eligible investments in an equivalent amount within a period of five years from the end of the calendar year in which the obligation is incurred. For investment alternative tax obligations incurred as a result of any of the first three tax returns filed by a casino licensee after December 31, 1978, 50% of any investments made in satisfaction of such obligation must be made in the City of Atlantic City and 50% must be made in any other municipality of this State. N.J.S.A. 5:12-144b.

All investments and cumulative investments made by a casino licensee pursuant to section 144 are subject to a determination of eligibility by the Commission. In determining eligibility, the Commission is directed to "consider the public

interest, including the social and economic benefits to be derived from such investments for the people of this State." N.J.S.A. 5:12-144b.

In addition to making investments, a licensee may satisfy a section 144 investment obligation for any given year by making contributions of money or realty in support of the purposes specified in subsection d. of that section. N.J.S.A. 5:12-144d. In order to qualify for credit against a section 144 investment obligation, the Commission must determine that such contributions "best serve the public interest and either"

> (1) directly relate to the improvement, furtherance and promotion of the tourist industry in this State through the planning, acquisition, construction, improvement, maintenance and operation of recreational, entertainment, and other facilities for the public, including, without limitation, a performing arts center, the beaches and shore front of this State, and transportation facilities providing or enhancing service in resort areas of this State, or (2) directly relate to the improvement, furtherance, and promotion of the health and well-being of the people of this State through the planning, acquisition, construction, improvement, maintenance, and operation of a facility, project or program approved by the commission. [N.J.S.A. 5:12-144d].

In accordance with the mandate of the statute, the Commission promulgated regulations consistent with the provisions of Article 11 of the Act (N.J.S.A. 5:12-139 through 152) "as to the eligibility of the investments and cumulative investments required by this article." N.J.S.A. 5:12-144(f); see N.J.A.C. 19:54-2. These regulations also address qualification or "allowability" of contributions in lieu of investments.

Resorts incurred an investment alternative tax obligation of $4,645,797 for the calendar year 1979. In an effort to satisfy this obligation, Resorts submitted an application to the Commission on May 21, 1984, seeking investment credit for various investments and contributions claimed to have been made in satisfaction of this obligation between 1980 and 1983. This application, which was amended on June 5, 1984, was submitted pursuant to a Commission regulation which required all casino licensees to submit for Commission review by no later than May 21, 1984, all investments or contributions claimed to have been commenced prior to the effective date of the Commission's investment alternative tax regulations (February 21, 1984). N.J.A.C. 19:54-2.5(b).

By letter dated June 20, 1984, Chairman Walter N. Read notified Resorts that its amended application was "so deficient in content and substance" that it would be impossible for the Commission to process it in its present form. Resorts was provided with an outline of the basic information which should be included with such an application, and was extended a new filing deadline of July 9, 1984, within which to file a meaningful application. By letter dated June 26, 1984, Chairman Read acceded to a request by counsel for Resorts that this filing deadline be further extended to July 30, 1984. In granting this request, Chairman Read advised Resorts that "any further delay occasioned by inadequacies in Resorts' filings will jeopardize the ability of the Commission to rule significantly in advance

of the close of this year, and thus may compel Resorts to pay the full obligation as investment alternative tax if a negative ruling is issued near the end of the year." Resorts filed a second amended petition with the Commission on July 31, 1984. Although this petition also left many significant questions concerning Resorts' claimed investments and contributions unanswered, the Commission proceeded with the processing of Resorts' application.

On September 11, 1984, the Public Advocate filed with the Commission an "Application to Intervene as a Party," together with supporting documentation, in the matter of Resorts' application for investment credit. Following an expedited briefing schedule, the Commission on October 10, 1984, granted the Public Advocate permission to intervene in the contested case portions of the consideration of Resorts' application.

A prehearing conference concerning Resorts' application for investment credit was held on November 1, 1984. The purpose of this conference was to identify the issues which would be addressed and the procedures which would be followed during the Commission's consideration of Resorts' application. See Prehearing Conference Order (November 8, 1984). Pursuant to Commission regulations, public hearings concerning Resorts' claimed investments and contributions were held on November 30 and December 3, 1984, in Atlantic City and on December 4 and 6, 1984, in Lawrenceville. N.J.A.C. 19:54-2.8. The Commission orally delivered its determination of Resorts' application at it

public meeting of December 12, 1984. This opinion is intended to expand upon the comments and reasoning of the Commission in reaching its decision.

II. SUMMARY OF INVESTMENTS AND CONTRIBUTIONS CLAIMED

Resorts has sought determinations of eligibility and allowability for the following investments and contributions.

A. INVESTMENTS:

1. Resorts International Hotel and Casino.

Resorts has claimed $7,488,170 for various improvements made to its casino hotel facility including, among others, funds expended in the modification of its casino room and hotel lobby, the improvement of its guest rooms, the creation of VIP suites, and the development and improvement of employee offices and facilities, retail shops and lounge, dining, theatre and kitchen facilities.

2. The Bradway Addition.

Investments totalling $21,559,917 have been claimed for the construction of an addition to Resorts casino hotel which contains meeting and convention space, a swimming pool, restaurants, shops, and other amenities utilized by patrons of Resorts casino hotel complex.

3. Resorts North.

Resorts has claimed $3,558,542 of investment credit for the refurbishing of 176 hotel rooms which are annexed to Resorts casino hotel and are maintained as an "integral part of its hotel casino complex." Second Amended Petition, p.4.

4. Resorts Parking Garage.

An investment credit of $7,335,102 has been claimed for the construction of a 726-space parking garage which is located adjacent to the casino hotel in Atlantic City and is used to provide valet parking services for patrons of Resorts' casino hotel complex.

5. Terrace and Seaside Motels.

The Seaside Motel was an operating motel in Atlantic City and was acquired by Resorts for the purpose of housing certain of its administrative offices. When these offices were transferred to the Terrace Motel, another then operating motel located in Atlantic City and acquired by Resorts for conversion to office space, the Seaside was demolished. Resorts has claimed $1,356,513 in investment credits for its expenditures with regard to these properties.

6. Steeplechase Pier.

The Steeplechase Pier is an amusement pier in Atlantic City acquired by Resorts in 1982. No development of the pier has taken place since its acquisition. Resorts claims an investment credit of $208,657 with regard to the acquisition of this pier.

7. Steel Pier.

The Steel Pier is an amusement pier in Atlantic City acquired by Resorts in 1978. It is no longer used as a public entertainment facility. Resorts has claimed

$1,890,720 of investment credit for funds expended in the repair of fire damage to the pier and the construction of a heliport.

8. Kaltman Warehouse.

The Kaltman Warehouse is a previously existing warehouse in Atlantic City which was acquired by Resorts for the purpose of housing its purchasing department and print shop. Some funds were expended to improve the building for these purposes. A total investment credit of $1,984,611 is claimed.

9. 611 Atlantic Avenue Warehouse.

This is a warehouse facility located in Atlantic City which Resorts leases for use as its records storage facility. Resorts claims an investment credit of $2,592 for improvements made to the lighting and security systems of the building.

10. Country Place (The Woods).

Country Place was a joint venture housing project constructed in Egg Harbor Township in 1981. It consists of 200 one and two bedroom condominium units. Resorts has claimed an investment credit of $9,402,257 for this project.

11. The Pinnacle (Wrangleboro).

The Pinnacle is a housing project in Galloway Township. Originally designed to be built in 3 phases, only the first phase has been initiated. The exact number of units actually built is not clear from the information

submitted by Resorts, but it would appear that between 110 and 130 units have been produced for a claimed investment of $5,000,000.

12. Lake Lenape.

Lake Lenape was a proposed planned unit development to be built in Hamilton Township. Due to problems encountered in obtaining building approvals from the Pinelands Commission, this project was abandoned and no construction ever occurred. Resorts claims an investment credit of $421,304 for this project.

13. Sea Pines.

Sea Pines was a proposed housing project in Pleasantville. Due to several problems, including its close proximity to a toxic landfill site, no development ever occurred. Resorts claims an investment credit of $736,439 for this project.

The two remaining investments claimed by Resorts should, for reasons to be explored in more depth below, properly be reviewed as contributions rather than investments. For present purposes, however, they may be described as follows:

14. Improvements to Sewerage Collection System.

Resorts has claimed an investment credit of $1,643,281 for improvements made to the Atlantic City Sewerage Company sewerage collection system with funds provided by Resorts. These improvements serve Resorts casino

hotel complex and the entire Pennsylvania Avenue/Urban Renewal Tract area. Resorts owns a large percentage of the property which will be served by these improvements and is entitled to seek reimbursement from other developer-users of up to 100% of the funds it was required to expend for the construction of these improvements.

15. Purchase of Housing Authority Bonds.

Resorts has sought an investment credit of $1,000,000 for funds which, through the Resorts International Foundation, Resorts used to purchase mortgage revenue bonds from the Atlantic City Housing Authority. The proceeds of these bonds were used by the Housing Authority in a program designed to provide low cost infill housing for the residents of Atlantic City.

B. CONTRIBUTIONS:

Resorts, in its second amended petition, claimed investment credit for $1,916,339 in contributions made to various charitable and non-profit organizations between the years 1980 and 1983. A Commission analysis of the supporting documentation for these contributions submitted by Resorts indicates that these claimed contributions actually total approximately $875,000. It would appear that $1,000,000 of this discrepancy is due to Resorts' inclusion of its $1,000,000 purchase of Atlantic City Housing Bonds in both its list of claimed contributions and investments. The remaining $40,000 discrepancy remains

unresolved. However, based on the Commission's disposition of Resorts request for investment credit for these contributions (see Part IV infra), this discrepancy need not be addressed here.

III. LEGAL ISSUES

Two significant legal issues have been raised during the course of this proceeding which are crucial to the Commission's consideration and disposition of Resorts application for investment credit. The first issue concerns the meaning and scope of the public interest standard for eligibility of investments and contributions under section 144. The second issue concerns the effect of a licensee's failure to meet the alternative investment obligations imposed by subsection b. of section 144.

A. THE MEANING OF THE "PUBLIC INTEREST" STANDARD CONTAINED IN N.J.S.A. 5:12-144b.

The declarations of policy and legislative findings expressed in section 1(b) of the Act establish quite clearly that the primary purpose underlying the authorization of casino gaming in this State was its use as an unique tool of urban redevelopment for the City of Atlantic City. N.J.S.A. 5:12-1b. In meeting this objective, the Legislature recognized that the introduction of major casino hotel convention complexes would have both direct and indirect beneficial effects on the achievement of this legislative goal.

The primary direct benefit was the obvious addition of first-class convention hotel complexes to the hospitality industry of the City through new construction or the refurbishment of existing hotel structures. To assure the exceptional quality of these complexes is both initially established and subsequently maintained, the Act gives the Commission broad authority to review and approve every aspect of their design and construction. This authority includes the establishment and enforcement of aesthestic and architectural standards. N.J.S.A. 5:12-1b(11). The Commission is also granted the authority to require a casino licensee to provide a fair mixture of meeting, exhibition, dining, entertainment and indoor sports space so as to best promote the tourist, resort and convention industries of the State. N.J.S.A. 5:12-83e. Furthermore, casino licensees are commanded, as a condition of licensure, to demonstrate the continuing suitability of the casino and its related facilities and to maintain the physical plant as a first-class, superior hotel and convention complex. See N.J.S.A. 5:12-84e; N.J.S.A. 5:12-1b(8); N.J.A.C. 19:41-2.1 et seq. Naturally, construction and operation of these facilities would create employment opportunities, increased tax ratables for Atlantic City and additional tax revenues for the City and State.

The indirect beneficial effect sought to be obtained from the introduction of these major casino hotel convention complexes was the attraction to Atlantic City of other developers and

investment capital through the renewed economic activity which the casinos created. N.J.S.A. 5:12-1b(4). It was this secondary, or indirect, benefit which the supporters of casino development in Atlantic City hoped would lead to the complete rebirth and redevelopment of the City. As the Act explicitly states, "the introduction of a limited number of casino rooms in major hotel convention complexes, permitted as an additional element in the hospitality industry of Atlantic City, will facilitate the redevelopment of existing blighted areas and the refurbishing and expansion of existing hotel, convention, tourist and entertainment facilities;...and attract new investment capital to New Jersey in general and to Atlantic City in particular." N.J.S.A. 5:12-1b(4).

In exchange for constructing and maintaining these casino hotel complexes, casino licensees were provided with the extraordinary privilege of conducting casino gambling. The concept underlying the introduction of casino gaming, limited solely to Atlantic City, was that the lure of casino licensure would serve as the inducement to draw private enterprise back to the City, to obtain massive investment and to establish a healthy industry compatible with the City's history and natural resources. The extraordinary prospect of casino operations, not the oft-used tax abatement schemes prescribed with mixed results for many urban problems, was to procure the turnaround of the moribund resort. Moreover, the Legislature understood that competition among the casino hotels would bring further

improvements to the casino hotels even beyond those demanded by licensure criteria and, thus, would assure the creation of "varied attractions and exceptional facilities." N.J.S.A. 5:12-1b(12). Our experience with the development of the industry fully justifies this expectation. With the licensure of additional establishments to challenge Resorts' initial monopoly, all licensees, even those without section 144 obligations, have engaged in continuing improvement and enhancement of their properties. Parking garages have been constructed, room towers built or expanded and other amenities added to enable each licensee to remain competitive with the others and to secure a segment of the patron market. No public subsidy has been needed to spur these business expenditures.

Turning to the reinvestment provisions of the Act, it should be noted first that section 144 of the Act is a tax section which affects only operating casinos, i.e., those which have already met the facilities requirements of the Act. Indeed, as originally enacted, a casino could not incur an obligation under section 144 until its third annual tax return, a breathing period which was eliminated in 1979 in view of the enormous success enjoyed by Resorts. See L. 1979, c.198, §2. Additionally, section 144 imposes an additional 2% gross revenue tax only on casino licensees whose gross revenues have grown to the point where they exceed the licensee's cumulative investments, including the casino hotel complex, in New Jersey. Moreover, section 144 cannot compel investments even by obligated

casinos since they retain the choice of paying the additional tax. This 2% tax, if paid, is dedicated to the same senior citizen and disabled resident programs which are funded by the basic 8% gross revenue tax. See N.J.S.A. 5:12-145.

In view of the uncertain applicability and effect of the reinvestment tax provision, as compared to the uniform and pervasive conditions and criteria for casino licensure, it cannot be doubted that the effectuation of the Act's basic policies was to flow from the latter rather than the former. It is thus evident to us that, in imposing the additional tax obligation on successful casino operators, the Legislature was striving to obtain additional benefits beyond those to be anticipated from the introduction of gaming itself. Accordingly, the Legislature established a system of investment tax credits whereby a licensee could elect to receive a dollar-for-dollar credit against this additional 2% tax by making qualifying investments.[1] However,

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1. Thomas Seessel, an economic and urban policy consultant and a former state official responsible for housing and urban redevelopment programs, testified as an expert for Resorts as to the public interest, the revitalization of rundown urban centers and the ingredients needed to rejuvenate declining cities. He stated that investment and employment were the two critical needs for revival of a depressed area and he expressed his opinion that the projects submitted by Resorts furthered Resorts' own business and, therefore, advanced the public interest in tourism and recreational enterprise. However, when asked what purpose would be served by section 144 if these same results would be achieved through the introduction of casino gaming itself, Mr. Seessel expressed ignorance as to the legislative intent behind section 144. (T 12/4/84, 530 to 538).

as with virtually all tax credit programs which exist on the federal or state levels, such tax credits may not be garnered unless some compensating public benefit is realized. Thus, as noted previously, the investment credits authorized by section 144 are subject to a determination of eligibility by the Commission.

In making a determination of eligibility as to an investment, the Commission is required to "consider the public interest, including the social and economic benefits to be derived from such investments for the people of this State." N.J.S.A. 5:12-144b. Furthermore, it is clear that in assessing the "public interest" the Commission is not bound to merely echo the policy provisions of the Act and, in essence, reward the casinos for doing that which they must, by law or competitive pressure, do anyway. The additional employment opportunities, tax ratables and revenue sources which flow from a casino licensee's business judgment to upgrade its own facility are all contemplated by the Act as being the expected benefits of casino licensure. To accept the proposal advocated by Resorts, that the Commission must credit any real property investment having any of these effects, would mean that virtually any investment would qualify. The responsibility of the Commission to determine eligibility in the public interest would be rendered meaningless and its obligation to adopt regulations governing eligibility would be a mere formality. See N.J.S.A. 5:12-144b. and f. More to the point, the obligated casino would be entitled to a

dollar-for-dollar tax credit without any demonstrable benefit garnered for the public good. Given the Legislature's acute awareness of the troubles besetting Atlantic City, it would be incongruous to find that the Legislature fashioned the investment alternative tax and the public interest standard merely to reinforce the profit motive of the more successful casinos while the City's problems went unattended.

This view of section 144 and its public interest standard is reinforced by an examination of the statutory language of section 144 and a review of other, related provisions of the Act. As to section 144, the Legislature provided a definition of both "investments" and "cumulative investments." The distinction is important. Cumulative investments are used to determine whether the casino licensee has incurred an obligation for a given year, i.e., if its gross gaming revenues exceed the amount of its eligible cumulative investments as of the end of the year. Once an obligation is incurred, it can be satisfied by the casino making eligible "investments" in a sufficient amount within the five year period allowed by the Act. Thus, despite the similarity of the language and the impression that cumulative investments means merely a compilation of investments, these two terms refer to different concepts which serve different purposes in the reinvestment scheme. It is therefore significant that "investments" are defined as "equity investments in land and real property on which improvements are made and in real property improvements," whereas "cumulative investments" are defined, in

pertinent part, as "investments in and debt financing of the licensed premises, plus other investments in and debt financing of land and real property on which improvements are made and real property improvements." N.J.S.A. 5:12-144c. (emphasis added). Evidently, the Legislature determined to allow a casino licensee to include its casino hotel complex expenditures in deciding whether an investment alternative tax would be imposed. However, the Legislature omitted reference to casino hotel property in defining "investments" which might satisfy such an obligation. This omission cannot be considered inadvertant or inconsequential but rather is totally consistent with the overall statutory scheme as previously discussed.

The significance of the distinction between "investments" and "cumulative investments" becomes more clear when other tax provisions of the Act are considered. Those provisions also underscore the legislative intent to demand additional public benefits in return for investment alternative tax credit. Section 146, N.J.S.A. 5:12-146, offers to a potential casino licensee an option to obtain a real property tax abatement for its casino hotel facility.[2] There are, however, conditions which must be accepted if a casino license applicant wishes to

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2. Resorts' urban policy expert testified that the Casino Control Act presented a unique redevelopment plan because it made no provision for tax abatements. (T. 12/3/84, 485-86). Although his knowledge of the Act was incomplete, his point may be unaffected since no casino applicant or licensee has sought the tax abatement of section 146.

enjoy such an abatement. First, an abatement will only be granted to an applicant willing to locate its facility in a section of the City which this Commission and the Department of Community Affairs find to be so blighted as to warrant this special tax treatment. See N.J.S.A. 5:12-146a. Second, a casino licensee receiving the abatement is subject to an excess profit recapture mechanism which, similar to section 144, gives the obligated casino five years to avoid forfeiture of the excess profit. N.J.S.A. 5:12-147b. Within the five year period, the casino licensee must increase its "cumulative investments" to the amount of its gross income from all cumulative investments for the tax year. Notably, this subsection refers exclusively to "cumulative investments" as defined in section 144 and avoids any use of the term "investments." Moreover, subsection 147b. makes explicit the fact that, to avoid forefeiture of the excess profit, the casino may improve its own casino hotel property.

The foregoing demonstrates that the Legislature could and did state in unequivocal terms that increased investment in the casino hotel complex would be counted for purposes of the excess profit provision of section 147. There is no reason to believe that it could not have made its will equally clear if it desired to grant credit under the investment alternative tax of section 144. Instead, it carefully delineated between "cumulative investments" and "investments" and permitted credit for the former in section 147 but only for the latter in section 144. Moreover, sections 146 and 147 illustrate that the Legislature

did insist on commensurate public benefits, i.e., the construction and operation of a casino hotel in a blighted area, in exchange for tax forgiveness. A similar reading must be afforded to section 144 lest the investment credit be used as a subsidy for casino hotel development and maintenance without any compensating returns.

Yet additional support for the Commission's view is to be found in the allocation of investments between Atlantic City and other municipalities in the State. Under subsection 144(b), 50% of the casino licensee's qualifying investments must be made in the City and 50% elsewhere in New Jersey. If the Commission were compelled to credit any investment in the licensee's casino hotel and related facilities, then Atlantic City's well-known problems and needs would not be considered or addressed in the expenditure of investment funds generated by this provision. . However, with regard to the 50% of investments made outside the City, where casino hotels are not permitted, the Commission would be authorized and obliged to assess the public interest in the particular community and the compatibility of the investment with the deficiencies, assets and plans of the affected municipality. Once again, this result runs directly counter to the statutory design of rebuilding and revitalizing the casino industry's host city.

Having satisfied ourselves that the Legislature did not mean to so restrict our eligibility determination as to completely relinquish potential tax revenues without any proven

gain for the City or its people, we must now decide how to ascertain the "public interest" and apply it to the projects under review. Initially, this broad standard must be construed in light of the fact that every dollar of credit allowed to a casino licensee results in the cancellation of a dollar in tax revenue which would be used to assist the elderly and disabled residents of this State. N.J.S.A. 5:12-145c. In addition, the Commission must also recognize the basic policy provisions of the Act. Unlike Resorts' view, however, the Commission perceives the policy of the Act as being the reconstruction of Atlantic City's blighted areas and the redevelopment of its tourist and convention trade; the policy is not the establishment of casino gaming as an end to itself. N.J.S.A. 5:12-1b(3), (4) and (5). And, of course, the Commission is specifically enjoined by section 144 to consider not only the economic but the social benefits to be derived from the investment or contribution for which credit is sought. N.J.S.A. 5:12-144b.

Keeping these general principles in mind, the Commission must take account of all relevant factors bearing on the investment project and its potential impacts. Several of these factors are listed in section 2.7 of the Commission's regulations, N.J.A.C. 19:54-2.7, to wit: the extent to which a proposed investment responds to needs created by legalized casino gaming; the pressing social and economic needs of the municipality or region; and, for projects located outside Atlantic City, the comparative need of the area for the types of

facilities, benefits or services which the project will provide.[3] Even upon a cursory examination of these factors, it is evident that investments in a great variety of commercial, residential, transportation, and social and public service projects could qualify for investment credit under this standard. In this era of increasing urban decay and what many have characterized as an impending infrastructure crisis, various potential investment and contribution opportunities await meaningful participation by the casino industry. For example, there are very few cities in this State which could not utilize the economic stimulation which would be provided by the construction or rehabilitation of commercial or retail facilities in their downtown areas.[4]

In view of the practical problems presented by attempting to enumerate all the relevant factors bearing on eligiblity or to

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3. Mr. Seessel, Resorts' expert witness, agreed that determining the public interest is a difficult and complicated endeavor. He accepted the factors listed in N.J.A.C. 19:54-2.7 as being "quite reasonable and valid" for this determination. T 12/4/84, 533-1 to 9).

4. Steven Batzer, an Atlantic City businessman, former president of the Greater Atlantic City Chamber of Commerce and present Chairman of the Inlet Community Development Corporation, testified for Resorts and stated his opinion that the improvements to Resorts' facility were in the public interest because they created jobs, increased tax ratables in the City, and furthered tourism. (T 11/30/84, 45 to 52). However, Mr. Batzer acknowledged that several areas had not been improved with casino gaming. Specifically, he cited the need for a rebuilt or new convention hall, an improved airport, railroad service, infrastructure needs, commercial development and housing. (T 11/30/84, 65-2 to 21).

define all the types of investments which would meet the public interest standard, N.J.A.C. 19:54-2.13 identifies certain kinds of investments which the Commission will ordinarily find ineligible for investment credit. These investments are deemed presumptively ineligible due to their failure to make an independent contribution to the public interest which justifies the tax credit afforded by section 144.

The first kind of presumptively ineligible investment identified by this regulation is the repayment of debts secured by liens on the licensed premises. N.J.A.C. 19:54-2.13(a)(1). Obviously, if the Legislature decided that equity investments in the licensed premises were not entitled to section 144 "investment" credit (see analysis supra), the repayment of a debt secured by a mortgage or lien on the licensed premises should also be denied a determination of eligibility as an investment. As noted previously, a licensee is rewarded for the construction and maintenance of the licensed premises through the receipt and retention of the casino license; no public benefit is accrued through the retirement of debt secured by the casino hotel complex.

A licensee should also be expected to bear the costs and accrue the benefits of maintaining, renovating or rehabilitating its own investment property, including the licensed premises. N.J.A.C. 19:54-2.13(a)(2). No significant public benefit is achieved when a licensee merely maintains an eligible investment property once it has been constructed. This is a normal and

foreseeable obligation of any property owner. Moreover, as to the casino hotel complex, it is an obligation imposed by the Act and the regulations for continued licensure and casino operation. See N.J.A.C. 19:41-2.7. The public should not forego tax revenues in exchange for otherwise necessary expenditures for maintenance and upkeep.

Similarly, N.J.A.C. 19:54-2.13(a)(3) makes presumptively ineligible any real property improvement made to an eligible investment property which the Commission finds the licensee would have made regardless of the investment obligation imposed by section 144 because the improvement enhances the profitability of the investment property. Clearly, no additional public benefit is obtained by giving a licensee a tax credit for an improvement which would have been made regardless of the availability of the investment tax credit. For reasons already given, the Legislature could hardly have believed that it was necessary to have the Commission issue determinations of eligibility and allocate investment credit for investments which would have been made anyway.

Finally, N.J.A.C. 19:54-2.13(a)(4) presumptively precludes investment tax credit for mere acquisitions of land, real property and real property improvements, including such property as has been determined to be eligible in the hands of another casino operator. No public benefit is obtained when an individual merely acquires a piece of land or an already existing building. If section 144 tax credits were authorized for such

purposes, casino licensees could meet their section 144 investment obligations by continuously reselling the same piece of property to one another. Or licensees could simply purchase all the vacant land which exists in the City of Atlantic City, or acquire existing blighted areas, and do nothing further. The Legislature obviously did not intend such a futile result when it created this investment tax credit program.

In summary, investments by a casino licensee in its own casino hotel complex or related facilities should not be eligible for investment credit under section 144. Moreover, any investment which is for the primary benefit of the casino licensee and which does not provide any significant independent benefit to the public is ineligible for the investment tax credits afforded by section 144 of the Act. The "public interest" in the context of this tax credit program is not served by such investments.

B. THE EFFECT OF A LICENSEE'S FAILURE TO SATISFY THE INVESTMENT OBLIGATIONS IMPOSED BY SECTION 144b.

Resorts has argued throughout this proceeding that a casino licensee may be given partial credit against a section 144 investment alternative tax obligation for eligible investments actually made within the statutorily authorized five-year investment period. To fail to give such partial credit, argues Resorts, would lead to the absurd result that investments by casino licensees would be discouraged for fear of incurring the

tax obligation despite good faith efforts to make qualifying investments.

The Commission finds Resorts' analysis and conclusion concerning this issue to be unpersuasive. The language of subsection 144(b) states in clear and precise terms that licensees "shall make investments in an amount not less than 2% of the gross revenue for said calendar year." N.J.S.A. 5:12-144b (emphasis added). This subsection goes on to state that for obligations incurred during the first three years of operation, 50% of the required investments "shall be made" in Atlantic City and 50% of such investments "shall be made" in any other municipality of the State. Subsection 144(e), which actually imposes the investment alternative tax if the investments specified in subsection b. are not made, states that the tax shall be "in an amount equivalent to 2% of gross revenue." N.J.S.A. 5:12-144e. This language neither invites, nor requires, interpretation. To the contrary, it quite clearly states that a 2% tax on gross revenues shall be incurred if a licensee fails to either: (1) make eligible investments or contributions in an amount not less than 2% of its gross revenues for the year in which the obligation is incurred, or (2) allocate these investments and contributions in the manner required by subsection 144(b).

Moreover, application of the plain meaning of this language does not lead to an irrational or absurd result. The clear purpose of the Legislature in enacting section 144 was to

encourage successful casino operators to reinvest at least 2% of their revenues in Atlantic City and New Jersey. The Legislature obviously intended to spur the licensee to meet its full investment responsibility in order to obtain the tax benefit and not to permit either the licensee or the Commission to modify either the extent or the allocation of this investment. If such discretion had been permitted, each licensee might only make as much investment as was beneficial to its particular tax situation in that year, or might choose to make all of its investments in areas outside of Atlantic City. Such discretion would be clearly contrary to the public purposes intended to be served by this tax credit program. The Commission would also note that the recently enacted Casino Reinvestment Development Authority Act, L. 1984, c.218 (Assembly Bill No. 688) continues to insist upon full satisfaction of the investment obligation, or in the alternative, payment of the full amount of the tax (which under this new statute is twice the amount of the investment alternative obligation).

Therefore, the Commission finds that a casino licensee, in order to satisfy a section 144 investment obligation during its first three years of operation, must make eligible investments in an amount equivalent to at least 2% of its gross revenues in the year in which the obligation was incurred, and that 50% of its eligible investments or contributions must be made in Atlantic City and 50% must be made in any other municipality of the State. Failure of the licensee to meet any

of these investment obligations results in the imposition of an investment alternative tax in an amount equivalent to 2% of the licensee's gross revenues in the year in which the obligation was incurred.

IV. DETERMINATIONS OF ELIGIBILITY AND ALLOWABILITY

Resorts bears the burden of proving that its claimed investments and contributions satisfy the standards established by the Act and the Commission's regulations for a determination of eligibility or allowability. See Prehearing Conference Order dated November 8, 1984. In meeting this obligation, Resorts was required to demonstrate why each of these investments and contributions should be found to be in the public interest, taking into account the social and economic benefits to be derived from such investments or contributions for the people of this State.

The record established by Resorts with regard to many of the investments and contributions included in Resorts' application for investment credit was rife with inconsistencies or failed to provide sufficient information to permit the Commission to conduct a detailed and meaningful review of Resorts' application. As indicated above, Resorts must bear the consequences of its own failure to establish the eligibility or allowability of its claimed investments or contributions. As will be discussed further below, this failure was most noticeable with regard to Resorts' presentation of the various contributions for which investment credit was sought. Nevertheless, the

Commission must act on the basis of the record which is before it. Accordingly, the Commission makes the following determinations of eligibility and allowability as to the investments and contributions submitted by Resorts.

A. INVESTMENTS:

1. Resorts International Hotel and Casino.

2. The Bradway Addition.

3. Resorts North.

4. Resorts Parking Garage.

All of the foregoing investments claimed by Resorts are either part of the approved casino hotel complex or a facility directly related to and solely dedicated to the casino hotel. Accordingly, for the reasons stated in Part III A, supra, the Commission finds that these investments are not within the public interest as contemplated by section 144 of the Act. These investments do not respond to public demands created by casino gaming and related developments, but are, rather, the very source of the pressures on public resources which legalized casino gaming has created. N.J.A.C. 19:54-2.7(a)(1). Although these investments are consistent with the general purposes of the Casino Control Act, they do not respond to the pressing social and economic needs of Atlantic City. N.J.A.C. 19:54-2.7(a)(2). Furthermore, various of the claimed improvements to Resorts casino hotel, the construction of the Bradway addition and the renovation of Resorts North were made by Resorts pursuan

to conditions of licensure attached to Commission approval of the expansion of Resorts' casino room. See In the Matter of the Application of Resorts International Hotel, Inc., a Casino Licensee, To Amend Its Casino License and its Certificate of Operation So As to Authorize a 60,000 Square Foot Boardwalk Casino, the Annexation of a 168 Sleeping Unit Motel Building and the Construction of the Bradway Site Addition, Opinion No. 79-CLI (Addendum), September 19, 1979. These investments were made by Resorts pursuant to its statutory obligation to maintain a first class casino hotel facility, to enhance its competitive position in a burgeoning casino industry and to increase its own profitability. Therefore, the Commission also finds these investments ineligible for investment credit pursuant to the provisions of N.J.A.C. 19:54-2.13(a)(2) and (3).

For the same reasons, the Commission also finds Resorts' investment in its Valet Parking Garage to be ineligible for section 144 investment tax credit. The Commission finds that the public has received no significant social or economic benefits as a result of these investments other than those general benefits which accrue from the construction and maintenance of the casino hotel complex. Resorts has been provided with a casino license in exchange for these investments; as previously stated, the Commission does not believe the Legislature was so naive or magnanimous that investment tax credits were also intended to be granted to a

licensee for meeting its statutory obligations or serving its own needs.

5. Terrace and Seaside Motels.

The Commission finds that these investments were also made by Resorts for its own benefit in connection with the operation of its casino hotel facility. Both of these buildings were operating motels at the time Resorts acquired them. By converting the Seaside to an office building and subsequently demolishing it, and then converting the Terrace to its existing office facility, Resorts has in fact decreased the number of motel rooms available to the Atlantic City hospitality industry. These actions were in direct conflict with the goals of the Act. See N.J.S.A. 5:12-1b. Accordingly, the Commission finds that Resorts has failed to carry its burden of demonstrating that these investments were in the public interest. Moreover, the Commission also finds these investments ineligible pursuant to the provisions of N.J.A.C. 19:54-2.13(a)(2), (3) and (4). The bulk of the funds expended by Resorts in connection with these investments were for the acquisition of the properties. The purchase of existing usable buildings for conversion to other purposes which serve the needs of the licensee are hardly investments in the public interest.

6. Steeplechase Pier.

7. Steel Pier.

With regard to the Steeplechase Pier, the record establishes that Resorts has done nothing more than acquire

this property "for future development." If investment tax credits were granted for investments such as this, the people of Atlantic City and this State would accrue no benefits whatsoever from section 144. Accordingly, the Commission finds the purchase of the Steeplechase Pier ineligible for investment credit pursuant to N.J.A.C. 19:54-2.13(a)(4).

A similar conclusion must be reached with regard to Resorts' acquisition of the Steel Pier. Rather than contribute to the public interest, Resorts has in fact acquired and substantially removed from public use an attraction which was once a crucial element of the recreation and tourist industry in Atlantic City. Little or no effort has been made by Resorts to restore these two amusement piers to their former status as centers of family entertainment for the hospitality and tourist industries of the City. Whether intentionally or not, Resorts has essentially withdrawn these properties from competition with the casino industry for the entertainment dollar in Atlantic City. The Commission finds that Resorts has failed to demonstrate how its investments in these properties are within the public interest requirement of section 144.

8. Kaltman Warehouse.

9. 611 Atlantic Avenue Warehouse.

Both of these properties are used by Resorts in the operation of its casino hotel facility and, thus, constitute acquisitions or improvements made for the benefit of Resorts'

own operations. Neither of these investments has resulted in any significant independent contribution to the public interest. With regard to the Kaltman Warehouse, Resorts acquired an existing warehouse facility and converted it to its own use. The majority of the funds expended in connection with this investment were used to acquire the property. The renovations which were made to the building were either reasonably foreseeable maintenance expenses or made simply for the purpose of converting the property to Resorts' particular proposed use. Accordingly, the Commission finds that these investments are ineligible pursuant to N.J.A.C. 19:54-2.13(a)(2) and (4). Resorts improvements to the 611 Atlantic Avenue Warehouse are also ineligible for investment credit pursuant to N.J.A.C. 19:54-2.13(a)(2). Moreover, these improvements are further made ineligible because they are not equity investments in real property or real property improvements, but rather leasehold improvements which will revert to the owner of the building upon termination of Resorts' noncapitalized leasehold interest. See N.J.A.C. 19:54-2.2 ("investments" defined).

10. Country Place (The Woods).

11. The Pinnacle (Wrangleboro).

Resorts has claimed investment credits of $9,402,257 for 200 condominium units constructed at Country Place and $5,000,000 for approximately 120 units constructed at the

Pinnacle. Based on information submitted by Resorts, it would appear that both of these projects incurred significant legal or marketing problems. Had the Commission been given an opportunity to review these projects in advance of their commencement, the Commission might have denied them a determination of eligibility. Both of these projects consisted of units geared to the normal middle income market and offered little to satisfy the low income and family housing needs of the region. Notwithstanding this fact, the Commission does find that these investments do meet, to a limited extent, the broad public interest standard contained in section 144. Moreover, the Commission recognizes that Resorts, in making these investments, was attempting to respond to the will of the Commission that regional housing needs be addressed, even though Resorts did not seek approval of the particular projects which it chose to fulfill its commitment to invest $5,000,000 in housing. Therefore, the Commission finds that these projects are investments eligible for credit under section 144. The exact amount of credit to be accorded Resorts for its investments in Country Place and the Pinnacle will have to await an audit of the funds legitimately expended in their construction. However, this investment credit should be limited to the amount of funds associated with those units actually constructed. Funds expended for such things as land acquisition or site preparation for future development may be

the subject of a future application for investment credit when housing units are actually constructed. But there is no public interest within the meaning of section 144 for funds expended for purely "potential" benefits to be derived by the people of the State where no work is actively progressing on the project. Based on the foregoing, and subject to any subsequent audits and adjustments, the Commission finds that Resorts has satisfied its 1979 obligation to make 50% of its section 144 investments in municipalities other than Atlantic City.

12. Lake Lenape.

13. Sea Pines.

Both of these investments consist of proposed housing projects which were never actually developed. Resorts has conceded that both of these projects have been abandoned and that no construction of housing units will ever occur. Regardless of the reasons for the failure of these projects, the Commission is unable to find any public interest in these investments. In essence, Resorts did no more than acquire property and plan for its development. Accordingly, these investments are ineligible for investment credit pursuant to N.J.A.C. 19:54-2.13(a)(4). Whether these projects ultimately failed due to Resorts' bad business judgment or simply due to bad luck, the public interest has not been served in any way by these investments. Therefore, the Commission finds that no eligible investment has been made in either the Lake Lenape or Sea Pines projects.

14. Improvements to Sewerage Collection System.

Resorts has claimed an investment of $1,643,281 for improvements made to the sewerage collection system of the Atlantic City Sewerage Company. Resorts does not, however, maintain any equity interest in these improvements; therefore, under the requirements of the Act, the only way Resorts may claim section 144 credit for these improvements is to seek credit for a contribution to the Sewerage Company of the funds used to make these improvements.

A review of the record concerning these funds shows that Resorts has resisted at every opportunity the obligation to provide these monies. While a licensee's willingness to part with money or realty may not be conclusive to a determination of whether that transfer is in the best interests of the public as defined in section 144, in this particular case Resorts' attitude is reflective of the fact that Resorts did not intend to make a gift or donation of the funds but rather that it still intends to try to recoup these funds from the Sewerage Company. See N.J.A.C. 19:54-2.2 ("contributions" defined). This conclusion is further evidenced by the proposed agreement between Resorts and the Sewerage Company which presently provides, at Resorts' insistence, that Resorts be reimbursed through new hook-up fees in an amount up to 100% of its payments to the Sewerage Company.

The record also establishes that Resorts presently owns a large percentage of the property which will be served by these new sewer lines. Since Resorts will be a primary beneficiary of these new sewer improvements, and since Resorts intends to seek recoupment of its payments to the Sewerage Company to the greatest extent possible, the Commission finds that Resorts' payments to the Sewerage Company are ineligible for either investment or contribution credit pursuant to section 144. The Commission also notes that Resorts was obliged, as a condition of its CAFRA permit for its parking garage, a related facility under section 84(e) of the Act, to enter into an acceptable agreement with the sewerage authority to finance these improvements. As concluded in Part III A. supra, tax credits under section 144 should not be granted for obligations which must be satisfied as a condition of licensure. See N.J.S.A. 5:12-84e.

15. Purchase of Housing Authority Bonds.

The second investment claimed by Resorts which would appear to be more appropriately reviewed as a contribution is Resorts' purchase, through the Resorts International Foundation, of $1,000,000 of mortgage revenue bonds from the Atlantic City Housing Authority. Clearly, the purchase of bonds is not an equity investment in real property or real property improvements. Nor is the purchase of bonds a contribution to the bond issuing authority. Therefore, the only claim which Resorts may make with regard to this

expenditure is that it constitutes a contribution of $1,000,000 to the Resorts International Foundation.

The Resorts International Foundation is a nonprofit charitable foundation organized pursuant to the provisions of section 501(c)(3) of the Internal Revenue Code. 26 U.S.C. §501(c)(3). The Foundation is controlled and operated by various individuals who also serve as officers of Resorts International Hotel, Inc., the casino licensee. Section 2.25(b) of the Commission's regulations, N.J.A.C. 19:54-2.25(b), provides, in pertinent part, that a positive determination of allowability shall not be given to a contribution if the proposed recipient is a private non-profit corporation which is "directly or indirectly affiliated with or related to the contributing casino operator." The purpose of this regulation is to assure, to the greatest extent possible, that contributions made pursuant to N.J.S.A. 5:12-144d. are in the best interests of the public and that they are used for the stated purposes. To allow affiliated contributions would open the door to self-dealing and would require the State to closely supervise the administration of the contribution. Thus, the regulation merely implements the fact that a contribution is, in its simplest terms, a gift. When a person makes a gift, he gives up dominion and control over the property which is given.

Therefore, according to N.J.A.C. 19:54-2.25(b), the Resorts International Foundation is not an authorized

recipient of contributions from Resorts International Hotel, Inc., and the Commission may not grant section 144 credit to Resorts for the contribution of this $1,000,000. The Commission is compelled to make this determination even though it is aware that these funds have been used to purchase bonds for a purpose, namely the provision of low cost infill housing for the residents of Atlantic City, which is clearly within the public interest standard of section 144. Had Resorts taken appropriate steps to remove this obstacle, the Commission would have been inclined to grant a determination of allowability to this contribution. Resorts having failed to disaffiliate itself from the Foundation, the Commission must deny the allowability of this contribution.

B. CONTRIBUTIONS:

As indicated above, Resorts has claimed investment credit for $1,916,339 in contributions made to various charitable and non-profit organizations between 1980 and 1983. Subsection 144(d) of the Act, N.J.S.A. 5:12-144d., specifically states that a contribution of money or realty may be used to satisfy an investment obligation if the Commission determines that such contribution best serves the public interest and either (1) directly relates to the tourist industry of this State through the planning, improvement or operation of public facilities, or (2) directly relates to the improvement of the health and well-being of the people of this State through the planning, improvement or operation of a facility, project or program

approved by the Commission. In seeking a determination of allowability, a casino licensee bears the burden of establishing that a contribution fits these criteria and the overall purposes and policies of the Act.

Resorts has not argued that any of its claimed contributions satisfy the criteria specified in N.J.S.A. 5:12-144d(1). Resorts has argued, however, that all of its contributions directly relate to the improvement of the health and well-being of the people of this State, and thus qualify for investment credit. Resorts seemingly fails to recognize, however, that this fact alone does not authorize a determination of allowability for a contribution. In order for such a contribution to qualify for investment credit, it must also involve the planning, improvement or operation of a facility, project or program approved by the Commission. With one exception noted below, not only has the Commission not approved any facility, project or program associated with the contributions claimed by Resorts, but Resorts has failed to supply the Commission with sufficient information to even begin to determine whether the criteria of N.J.S.A. 5:12-144d(2) have been satisfied.

Of course, in many instances, the contributions claimed by Resorts were made to deserving and nationally recognized charitable institutions. While the Commission certainly encourages and applauds these kinds of charitable donations by casino licensees, the Commission does not find that these

contributions meet the project specific criteria of subsection 144(d). Contributions recognized pursuant to that subsection are made in substitution for the kinds of investments which are eligible for investment credit under section 144 and should further the same goals. The contributions claimed by Resorts, in contrast, fall within the ordinary range of corporate philanthropy and are the same kind of contributions normally made by any responsible corporate citizen of a community. For example, the 1983 Report of the Atlantic City Casino Hotel Association notes that the average rate of charitable contributions for all United States industries as reported by the Internal Revenue Service was 1.34% of pretax profit. The contributions claimed by Resorts generally fall below this level, and are certainly below the six-year casino industry average of 2.08% of profit as reported by the Association.

Furthermore, on this record, it is impossible to guage the benefits conferred by many of these contributions on the City of Atlantic City as opposed to the rest of the State or, in some instances, other states or countries. Without such knowledge, the Commission is unable to allocate these contributions to the licensee's obligation to make 50% of its investments in Atlantic City.

Section 144 contributions should be utilized as an alternative means for redeveloping Atlantic City and other parts of New Jersey. Scattered, ordinary, albeit worthwhile, charitable donations do not serve these ends. The Commission

would note that three contributions made by Resorts, totalling $150,000, were made to a program, the Atlantic Construction Training Program, which has been approved by the Commission. These contributions were made, however, pursuant to a condition attached to Resorts' casino license as part of its affirmative action obligation, N.J.S.A. 5:12-134; therefore, they are not eligible for investment credit pursuant to the analysis stated previously.

V. CONCLUSIONS

In summary, the Commission has made the following determinations of eligibility and allowability with regard to the investments and contributions claimed by Resorts. First, for the reasons stated above, the Commission denies a determination of eligibility to all the investments claimed by Resorts other than its investment in houses actually constructed in the projects known as Country Place and the Pinnacle. With regard to these housing investments, the Commission finds, subject to a verifying audit, that Resorts has made investments in an amount sufficient to satisfy its 1979 section 144 obligation to invest $2,322,899 in municipalities other than Atlantic City. Second, the Commission denies a determination of allowability to all the contributions claimed by Resorts.

Based on these determinations, the Commission finds that Resorts has failed to satisfy its 1979 section 144 obligation to make 50% of its eligible investments in the City of Atlantic City. Therefore, pursuant to the Commission's

resolution of the legal issues discussed in Part III supra, the Commission concludes that Resorts will owe 2% of its 1979 gross revenues, or $4,645,797, as investment alternative tax on March 15, 1985, unless Resorts makes $2,322,899 in eligible investments or contributions in the City of Atlantic City prior to January 1, 1985.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman

Joel R. Jacobson, Vice-Chairman

/s/ Don M. Thomas
Don M. Thomas, Commissioner

Commissioner Burdge, dissenting in part:

I concur in all the holdings and findings of the majority except insofar as it denies a determination of allowability to Resorts for its contributions to the Atlantic Construction Training Program. I would grant Resorts an investment credit of $150,000 for its contributions to this program.

E. Kenneth Burdge, Commissioner

Commissioner Zeitz, dissenting in part:

Although I generally concur with the holdings and findings of the majority, I must dissent from the majority's broad reading of the public interest standard contained in section 144. While I agree with the majority that the

Legislature never intended to give a casino licensee investment tax credits for investments in its own casino hotel or related facilities, I do not agree with the conclusion that section 144 investment tax credits were intended to be available for any investment which bestows a public benefit on the people of Atlantic City or this State. Rather, I read the provisions of N.J.S.A. 5:12-144, particularly subsection (d) thereof, and N.J.S.A. 5:12-1b(3) and (4), to give a clear indication that section 144 tax credits were intended to be utilized to channel investment funds into convention and non-casino related tourist facilities.

Based on this reading of the Act, I concur in all the determinations of the majority with the exception of its determination to grant eligibility to Resorts for its investments in the Country Place and Pinnacle projects. The desire to see city and regional housing needs met cannot be superimposed on the statute. Thus, I reject the majority's conclusion that section 144 investment tax credits were intended to bring about this result. Accordingly, I would deny Resorts a determination of eligibility for its investments in these housing projects and find that Resorts has failed to satisfy any of its 1979 section 144 investment obligation of $4,645,797.

Carl Zeitz, Commissioner

Dated: 1/8/85

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION NO. 151308

IN RE RESORTS INTERNATIONAL :
HOTEL, INC.'S BOARDWALK TRAM :
FARE REFUND PROGRAM :

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a Report and Recommendation by Commissioner Carl Zeitz on March 13, 1985, wherein it was recommended that the petition of Resorts International Hotel, Inc. be denied; and Resorts International Hotel, Inc. having filed exceptions thereto; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of April 24, 1985, to adopt said Report and Recommendation;

IT IS on this 25th day of April 1985, ORDERED that the Report and Recommendation of Commissioner Carl Zeitz in this matter is hereby adopted by the Commission and the petition of Resorts International Hotel, Inc. (PRN 151308) is hereby denied; and

IT IS FURTHER ORDERED that a copy of this Order be served upon Resorts International Hotel, Inc. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Thomas N Auriemma
Thomas N. Auriemma
Deputy Director, Legal Division

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
PETITION NO. 151308

IN RE RESORTS INTERNATIONAL :
HOTEL, INC.'S BOARDWALK TRAM : REPORT AND RECOMMENDATION
FARE REFUND PROGRAM :

APPEARANCES:

Richard Hluchan, Esq. (Sterns, Herbert & Weinroth) for petitioner Resorts International Hotel, Inc.

Katherine A. Smith, Deputy Attorney General for Division of Gaming Enforcement

Patricia M. Kerins, Senior Assistant Counsel, for the Casino Control Commission

Record closed: February 22, 1985; Decided: March 13, 1985.

Before Carl Zeitz, Casino Control Commissioner.

I. PROCEDURAL HISTORY

On May 31, 1983, Resorts International Hotel, Inc. ("Resorts") filed a petition for a declaratory ruling with respect to a proposed tram fare refund promotion. On June 29, 1983, Resorts submitted a memorandum of law and exhibits in support of its petition. A supplemental memorandum of law was received by the Commission on January 19, 1984.

On July 18, 1984, the Division of Gaming Enforcement ("Division") filed with the Commission its response to the Resorts petition.

On September 28, 1984, a prehearing conference was held before Chairman Walter N. Read and several legal issues were identified. They were:

A. Whether the Commission has jurisdiction to rule upon Resorts' operation of the Boardwalk tram.

B. Whether the previous decision by the Commission concerning a tram refund promotion has a res judicata effect on the present petition or whether the Commission may reconsider this matter upon a showing of good cause.

C. Whether the statutory policy of the prevention of casino domination of the tourist and convention industries in Atlantic City is offended by the use of the Boardwalk trams as a promotional tool by an individual casino, or the casino industry as a whole.

D. Whether competitive advantage will in fact inure to Resorts as a result of this program.

The undersigned was subsequently designated as Hearing Examiner and on December 13, 1984, a second prehearing conference was held before me. The matter was scheduled for hearing on January 3, 1985. Written notice of the hearing date was provided to other casino licensees, potentially interested individuals and entities, and the public at large.

The hearing was held as scheduled on January 3, 1985. Resorts and the Division were parties to the matter. Other individuals were permitted to participate pursuant to N.J.A.C. 1:1-12.6 and were thus allowed to argue orally and file

statements or briefs. A list of witnesses, exhibits, and those persons filing statements is attached to this Report and Recommendation.

On February 4, 1985, Resorts filed a letter in lieu of formal motion wherein it sought to reopen the hearing for the limited purpose of taking additional oral testimony with respect to Exhibit B-1, a document offered by counsel for Bally's Park Place, Inc., ("Bally's"), a participant at the hearing. By letter dated February 8, 1985, I denied this request.

Upon receipt of Resorts' posthearing brief, the record was closed on February 22, 1985.

II. INTRODUCTION

The tram is a train-like vehicle, pulled by a motorized tractor, which provides recreation and amusement to sightseers, conventioneers, and other visitors to Atlantic City's premier attraction, its renowned and rejuvenated Boardwalk. Beyond providing enjoyment, however, the tram also serves as a form of transportation. With the construction of most casino hotels on or near the Boardwalk, with the serious congestion of Pacific and Atlantic Avenues, with the projected renovation and expansion of Convention Hall, and with the growth of other non-casino attractions along the Boardwalk, the tram has assumed a far more significant role as a downtown people mover system than as a mere amusement ride.

Because of the foregoing and because of the statutory policy to encourage competition and to regulate and control economic concentration in the casino industry (N.J.S.A. 5:12-1(b)(12)), the Commission, in June 1979, initiated an investigation into the bid submitted by Resorts to acquire from the City of Atlantic City (the "City") the exclusive contractual right to provide tram service on the Boardwalk for three years. Subsequently, on June 29, 1979, a hearing was conducted by Commissioner Kenneth N. MacDonald, who had been designated as Hearing Examiner, to develop facts of record on which to base a determination whether to allow Resorts to obtain the tram franchise.

At that 1979 hearing, Resorts' officials freely acknowledged that tram service was a major factor in the ability of Resorts to obtain its share of patrons because of the hotel's location at one end of the Boardwalk and the distance from the facility to Convention Hall. Resorts' Chairman James M. Crosby went so far as to characterize the trams as being "critically important to the success of the boardwalk," and he agreed with William H. Weidner, then a Vice President of the Boardwalk Regency Corporation, that "the boardwalk tram is a very important mode of transportation now and ... will, in fact, become more important." While also conceding that control of the tram service by a casino operator created myriad possibilities for competitive advantages, Resorts' officials repeatedly and unreservedly assured the Commission that the trams would be operated in an even-handed manner and that any variation from the contract terms would be in writing and authorized by the City.

In light of these assurances, of the undisputed need for more efficient and attractive tram service, and of Resorts' genuine interest in providing proper and improved service for its benefit as well as for the benefit of the public, the Commission approved at its public meeting of July 11, 1979, the Hearing Examiner's recommendation to allow Resorts to acquire the contract subject to strict conditions therein to avoid or minimize competitive imbalance. As the Hearing Examiner's report makes clear, this decision was reached despite some continuing trepidations regarding Resorts' natural inclination, as aggressive business people, to employ the tram franchise to their own gain.[1] It should be noted that the Commission specifically reserved the issue whether control of the trams by a casino operator would run afoul of any more general policy in the Casino Control Act ("Act") against casino domination of the Boardwalk. In the Matter of the Contract for Operation of the Boardwalk Trams by Resorts International Hotel, Inc., Docket No. 79-CA-1, at pp. 3-4.

Subsequently, the contract between Resorts and the City was submitted to the Commission and was approved subject to the conditions contained in Commissioner MacDonald's report. Thereafter, Resorts commenced operating the trams.

By letter dated September 28, 1981, Robert S. Fiore, Senior Vice President of Finance at Resorts, advised Commission staff that Resorts was going to commence a tram fare refund

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1. For a fuller statement of these facts and issues, see the Report and Recommendation, dated July 9, 1979, In the Matter of the Contract for Operation of the Boardwalk Trams by Resorts International Hotel, Inc., Docket No. 79-CA-1.

program on September 30, 1981. Under the program Resorts exchanged at its entrance a coupon for a tram receipt held by any tram passenger and the passenger, in turn, exchanged the coupon at the casino slot booth for $1.00 in coins. Since the tram fare was also $1.00, the passenger was able to obtain a refund of his fare by departing the tram at Resorts and entering the casino room. The Commission was notified of that 1981 promotion only shortly before it was implemented. Although Mr. Fiore's letter recites that there was some discussion with Commission staff about advertising the promotion, no formal Commission authorization or written staff opinion was requested or obtained prior to commencement.

The promotion drew criticism from certain competitor casino hotels, and the Commission received several informal complaints. See, Order of Casino Control Commission dated December 22, 1981. Allegations were made that the refund program violated the Commission's 1979 decision and the City contract because Resorts was able to conduct the promotion at a much lower cost than other casino hotels. The differing cost, it was alleged, was due to the simple fact that, for every dollar refunded by Resorts, it received a dollar in fares. While Resorts must absorb the cost for operating the trams, casino competitors contended that the cost per passenger would be much less than the $1.00 fare. In contrast, the competing casino hotels stated that they would not have the benefit of the tram fare paid by the passenger and would be incurring an actual cost of $1.00 per refund.

A broader based objection to the 1981 promotion was advanced by Bally's. In a letter dated October 15, 1981, Bally's asserted that the limitations contained in the City contract prohibited the use of the trams to promote any casino, especially the operator's. Bally's further argued that the competitive advantage taken by Resorts could not be condoned on the ground that other casino hotels might emulate the Resorts program.

In response to these objections, Resorts submitted a letter dated October 22, 1981, in which it defended the refund program and the manner in which it was implemented. Essentially, Resorts argued that the promotional scheme was developed and instituted by the casino hotel and that it functioned completely independently of the tram operation which was unchanged in any way. Thus, while acknowledging that the Commission's 1979 opinion and the City contract demanded absolute neutrality and competitive equality with regard to the tram service, Resorts asserted that the letter and spirit of those obligations were fully met so long as Resorts did not hinder or impede any other casino from initiating similar promotions. Further, Resorts claimed that its innovative use of the tram as a "marketing tool" was no different from GNAC's acquisition of its own bus company which was approved by the Commission in the Trailways matter. See, In the Matter of the Petition of Trailways, Inc. for an Amendment to the Commission's Regulations Regarding Inter-City Bus Passenger Service by Casinos (September 1981).

The Commission believed that the issues raised by that 1981 promotion were substantial and important enough to be heard by the full Commission at a public meeting. Hence, by letter of November 17, 1981, all casino licensees were advised that the Commission intended to consider Resorts' tram fare refund program at its December 1, 1981, meeting. Specifically, the letter noted that the Commission was prepared to hear discussion on the question of whether the tram fare refund program was in violation of the 1979 Commission decision and inconsistent with the requirement to promote fair competition and to prevent undue economic concentration. See, N.J.S.A. 5:12-1(b)(12). Additionally, the Commission was interested in hearing argument on whether the use of the trams as a promotional tool by Resorts or any casino hotel offended the statutory policy to prevent domination of the tourist and convention industries by casino operators.

On December 1 and 15, 1981, the Commission heard argument on these two issues and thereafter found "that the operation of the boardwalk tram refund program by Resorts results in a competitive advantage for Resorts over other hotel casinos by reason of its exclusive control of the boardwalk trams" and further found that "the existence of such advantage [is] contrary to the Commission's previous ruling to allow Resorts to obtain the franchise for the trams and also [is] contrary to the policies of the Casino Control Act. N.J.S.A. 5:12-1(b)(12)." See, Order of the Casino Control Commission dated December 22, 1981. Accordingly, the Commission ordered

Resorts to discontinue the tram fare refund program.

Although the Commission did not issue a written decision in 1981, it is evident from the record of December 1 and December 15, 1981, that the basis for the Commission's finding of a competitive advantage by Resorts was that the increased ridership stimulated by the program (the "elasticity of demand") would help subsidize Resorts' operation of the trams. Simply put, Resorts, as operator of the trams, was able to refund its fares at cost, whereas all other participating casinos would be forced to participate in the program, if they chose to do so, at a retail level. Thus, when Resorts refunded $1.00 to its riders, it was merely refunding to those patrons the $1.00 that it had already received from such patrons. Resorts' cost was the actual cost of one ride on the tram, whereas the cost to any other participating casinos would, in fact, be the full $1.00 refund.

In 1981, the Commission, although hearing argument on the issue, did not make any findings or rulings regarding whether the use of the trams for purposes of marketing and promotion was violative of policies of the Act concerning casino dominance of the tourist and convention industries.

In 1982, the City opened bidding on a new three year contract for operation of the trams. Once again, Resorts was awarded this exclusive franchise.

As noted earlier, on May 31, 1983, Resorts filed a petition with the Commission seeking approval to institute a revised tram fare refund program. Before turning to the merits of that petition, however, it is necessary to address a threshold matter.

III. JURISDICTION

In its May 31, 1983, petition Resorts claims that the "tram operation is separate and distinct from the casino/hotel operation and therefore, it is Resorts' position that the Commission has no jurisdiction over the operation of the trams." Further, in its memorandum of law in support of the petition, Resorts vigorously contends that the Commission lacks "any authority to regulate the operation of the Boardwalk tram in Atlantic City in any respect." Resorts continues to press this argument in its posthearing brief. At the first prehearing conference in this matter, the question of the Commission's jurisdiction was identified as an issue to be resolved.

The Commission and the courts of this State have had scant opportunity to address the parameters of the Commission's authority to control and prevent economic concentration in ancillary service industries so as to encourage and preserve competition. Nevertheless, the few pronouncements on this subject indicate that the authority of the Commission in this area is broadly defined.

In the 1979 opinion relating to the trams, the Commission considered the question of its jurisdiction over a casino licensee's entry and participation in an ancillary

industry. In that opinion, the Hearing Examiner discussed at great length the jurisdiction of the Commission over Resorts' proposed contract with Atlantic City to operate the Boardwalk trams and the imposition of limitations upon its operation. It was concluded that:

> ... the Act evinces an unmistakable legislative intent to continuously monitor and protect competitive conditions in the casino industry. As noted, Section 1(b)(12) explicitly authorizes and obliges the Commission to encourage and preserve competition. Additionally, Section 84(e) of the Act, N.J.S.A. 5:12-84(e), requires each casino license applicant to satisfy the Commission that its casino hotel proposal will not adversely affect "casino operations" or "competitive conditions" before the proposal may be approved. Thus, the Act heavily emphasizes tne need for sensitivity to economic concentration and competition.... [Boardwalk Trams opinion at 12].

Similarly, the Legislature has made it clear that the hospitality industry in Atlantic City is to be preserved and that the casino industry is to be an integral part thereof, rather than "an industry unto themselves." N.J.S.A. 5:12-1(b)(5).

In view of the Commission's 1979 ruling in the Boardwalk Trams matter, with which I am in complete agreement, the jurisdiction of the Commission in this area is manifest and has been fully established. See also, Trailways opinion supra. Moreover, any doubt, as to whether the Commission's authority to regulate in the area of economic concentration is broad

enough to encompass the operation of this unique Boardwalk conveyance, is dispelled by the New Jersey Supreme Court's decision in Bally Mfg. Corp. v. N.J. Casino Control Comm'n., 85 N.J. 325, app. dism. 454 U.S. 804 (1981). In Bally, the Commission's adoption of a regulation prohibiting a licensed casino from acquiring more than 50 per cent of its slot machines from any one manufacturer, in view of the dangers inherent in permitting any one slot manufacturer to dominate this field, was affirmed by the Supreme Court. The Commission's authority to prevent economic concentration was given an expansive judicial construction.

An administrative agency is a creature of legislation and can exercise authority pursuant to the powers given to it by statute. Formerly, such statutory powers were strictly construed, and it was held that an agency had no powers except those expressly conferred. In re Port Murray Dairy Co., 6 N.J. Super 285, 301 (App. Div. 1950). Today, however, the greater emphasis is placed on legislative intent to be sought in the statute as a whole. Ibid. Thus, the grant of authority to an administrative agency, such as the Commission, is to be liberally construed to enable the agency to accomplish the Legislature's goals. The agency has "such implied incidental powers as may reasonably be adapted to that end." In re Suspension of Heller, 73 N.J. 292, 303 (1977). Accord, Cammarata v. Essex County Park Comm'n., 26 N.J. 404, 411 (1958).

The Legislature has granted broad powers to the Commission. It envisioned that the statutory and administrative controls over the casino gaming industry were to

be extraordinary, pervasive and intensive. See generally, Bally Mfg. Corp. v. N.J. Casino Control Comm'n., supra. See also, In re Martin, 90 N.J. 295 (1982). Indeed, over "11 statutory articles and almost 200 separate provisions cover virtually every facet of casino gambling and its potential impact upon the public." Knight v. Margate, 86 N.J. 374, 381 (1981). "The regulatory scheme is both comprehensive and minutely elaborate." Ibid.

Clearly, the Commission has vast powers. These powers were undoubtedly granted to permit the Commission to not only ensure the integrity of casino gaming but also bring to realization the redevelopment and revitalization of Atlantic City. The Legislature went to considerable lengths to determine and expound this State's public policy involving casino gambling. See, N.J.S.A. 5:12-1(b). The detailed public policy statements in the Act could not be more explicit or more expansive. Lest there be any doubt whatsoever as to the legislative intent regarding the authority of the Commission to implement the provisions and policies of the Act, the Legislature provided in Section 75 thereof that:

> The commission may exercise any proper power or authority necessary to perform the duties assigned it by law, and no specific enumeration of powers in this act shall be read to limit the authority of the commission to administer this act. [N.J.S.A. 5:12-75].

Accordingly, I find no merit to Resorts' claims that the Commission lacks authority to review a casino licensee's activities with respect to the operation of the Boardwalk tram. Moreover, where the casino in question is located at one end of

the Boardwalk and has freely acknowledged its dependence on the tram, the immediacy of the nexus between tram operations and casino business is unavoidable.

IV. THE PRESENT PETITION

A. Description of the Tram Fare Refund Program

In the instant petition Resorts has devised what it considers to be a new tram fare refund program which will eliminate the difficulties raised by the Commission in December 1981. Resorts claims that under the present proposal it will enjoy no competitive advantage as a result of its contract to operate the trams and that the refund program will be made available to all casino licensees.

The purpose of the promotion is to allow a tram rider to recoup the cost of his or her fare by presenting a ticket stub in the casino. (By Exhibit S-1, which is a stipulation between Resorts and the Division, Resorts "has agreed to locate the booths from which boardwalk tram passengers will be able to receive a refund of their paid fares in an area or areas other than the casino floor itself." Presumably, Resorts and the Division anticipate that, if the Commission approves this refund proposal, it will require all participating casinos to provide redemption areas in locations other than in the casino rooms.) In order to minimize potential fraud, only tickets bearing one of a predetermined number sequence will be refunded on any given day. This will prevent persons from collecting discarded tickets over the course of time and presenting them for refunds.

The program will operate in the following manner: As each rider boards the tram, he or she will be given a ticket stub in exchange for the $1.00 fare. This ticket stub will bear a number, which will be part of that day's number sequence. Each day, tram operators will be given a set amount of pre-numbered tickets, depending on the number that is determined to be necessary to meet that day's demand. Once the tickets have been issued to the tram operators, Resorts, as well as other participating casinos, will know the numbers to be refunded on any given day.

When a patron wishes to receive a refund of the tram fare, he or she will present the ticket stub at the ticket refund booth located in each participating casino hotel. Once the refund clerk is satisfied that the ticket presented is valid for that day, a $1.00 refund will be issued.

At Resorts, the refund clerk will be required to note the beginning number of that day's ticket number sequence on an envelope to contain all refunded tickets for that day. Each ticket will be date stamped as it is refunded, in order to cancel it. A casino's refund clerk will keep track of all tickets refunded during his or her shift and will be responsible for balancing the funds and refunds with which he or she is charged. Resorts' accounting department will review the program on a test basis to determine if the tickets on any given day are properly part of that day's number sequence.

Resorts claims that it will give all necessary and proper assistance to any casino hotel which may wish to offer a similar tram fare refund program. The details of the program will be explained and it is represented technical advice from Resorts will be available. Additionally, other participating casinos will have daily contact with Resorts so that they can be kept aware of the proper beginning number for any day's ticket number sequence.

Resorts asserts that it will have no cost advantage resulting from its operation of the Boardwalk trams because it will refund to any participating casino hotel the amount of profit, if any, before income tax earned by Resorts on each ticket refunded by another casino. According to Resorts this will allow it and other casino hotels to offer this tram fare refund program at the same cost.

Resorts submits that the foregoing proposal will eliminate the competitive advantage that concerned the Commission in December 1981 when it disapproved a tram fare refund arrangement then being utilized. The question of whether or not a competitive advantage for Resorts still remains will be discussed below. First, however, another threshold matter must be resolved.

B. Is the 1983 Resorts Petition Barred by the Doctrine of Res Judicata?

The September 28, 1984, prehearing conference order specified as an issue the question of whether the previous

Commission decision in 1981 concerning Resorts' tram fare refund promotion precluded consideration of the present petition and, further, whether good cause required reconsideration by the Commission. This issue had been raised previously by the Commission staff and Resorts and the Division had addressed the issue in prehearing memoranda. Neither party contends that the doctrine of res judicata bars consideration of the instant petition.

Res judicata is an ancient judicial doctrine which contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation. Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 435 (1960). Along with its related doctrine of collateral estoppel, the doctrine rests upon policy considerations which seek to guard the litigants against vexatious, repetitious litigation, and which strive to avert against the serious burdens such litigation imposes upon the community. Ibid. Res judicata will bar a subsequent legal action when that action involves precisely the same cause of action, parties, and issues as were involved in the previous litigation. Brick Township v. Vannell, 55 N.J. 583, 590 (App. Div. 1959).

New Jersey courts have accorded res judicata effect to decisions of administrative agencies. City of Hackensack v. Winner, 82 N.J. 1, 32-33. Decisions have stressed that the policy considerations which support this judicial doctrine

(finality and repose, prevention of needless litigation, avoidance of duplication, reduction of burdens of time and expenses, and basic fairness) have an important place in the administrative field. See, City of Hackensack v. Winner, supra at 32-33, and the cases cited therein.

On the other hand, the adjudicative functions of an administrative agency are actually an aspect of its regulatory powers. Consequently, the procedures and techniques developed to handle the operation and business of courts may not be transported in toto to administrative agencies. While the doctrine of res judicata has genuine utility and relevance in a Commission proceeding, the application of such doctrine must be tempered, as Justice Handler has observed, "by a full appreciation of an administrative agency's statutory foundations, its executive nature, and its special jurisdictional and regulatory concerns." Id. at 29.

Moreover, because administrative agencies serve in part to effectuate the constitutional obligation of the executive branch of government to see that the laws are faithfully executed, N.J. Const. (1947), Art. V, §1, par. 11, "the public interest is an added dimension in every administrative proceeding. That interest is necessarily implicated in agency adjudications, and, in a sense, the public is an omnipresent party in all administrative actions." City of Hackensack v. Winner, supra at 30.

As noted earlier, in 1981 the Commission ordered Resorts to cease its then operating tram fare refund program. The Commission found Resorts to have a competitive advantage. The proverbial door, however, was not conclusively closed. From a reading of the Commission's public discussions in December 1981, I find that Resorts presumably could have concluded that, if it could design a refund program without a competitive advantage to it, a new petition could be submitted to the Commission.

Whatever my ultimate comments may be with respect to the merits of the instant petition, I believe that Resorts has at least proferred a new element, that is, that it will distribute profits from the operation of the tram fare refund program to participating casino hotels. This new aspect of the tram fare refund program makes the principle of res judicata inapplicable. A new issue has been created, and the Commission, which is responsible for ensuring competition, preventing economic concentration, and fulfilling the mandate of the Act, has the obligation to review this petition with its new ingredient.

Additionally, the operation of the Boardwalk tram presents important issues. The Commission has reviewed aspects of its operation on two occasions. I do not believe we should quibble about the prior adjudications when broader considerations dictate that the tram issue be squarely and fully confronted by the Commission. A final resolution

involving the scope of permissible activities for casino operators of the tram will thus be achieved. I recommend, therefore, that the Commission's viewpoint respecting the Boardwalk tram be definitively and finally set forth and that this Report and Recommendation serve as the vehicle for such expression. Since repose and finality will result from this opinion, and since Resorts has injected a new element into its tram fare refund proposal, I find that the doctrine of res judicata should not in this case act as a bar to determining the instant petition and resolving once and for all the proper role of the tram as a marketing device for casino hotel operators.

Further, I do not find that the present petition constitutes a reopening or a rehearing of the petition decided in 1981. Accordingly, the ten day limitation set forth in the Act for filing a motion for rehearing, because additional material evidence has been uncovered, is inapplicable. See, N.J.S.A. 5:12-107(d). As noted, the 1981 Commission decision did not foreclose consideration of a revised tram refund program and did not reach the ultimate issue of the proper relationship between tram and casino hotel operations. Hence, it is now appropriate to turn to the merits.

C. Competition

In December 1981, the Commission ordered Resorts to discontinue its then operating tram fare refund program because

it resulted in a competitive advantage for Resorts over the other casino hotels. Accompanying the present petition is a copy of internal procedures which Resorts claims "address and cure the issues concerning competitive advantage which was the basis of the Commission's December 22, 1981, ruling." The attachments to the present petition contain, among other things, an assurance that Resorts "will refund to each participating casino the amount of profit before income tax, if any, earned by Resorts on each ticket refunded by another casino." Therefore, it is Resorts' position that the concerns expressed by the Commission in 1979 and 1981 should be satisfied since profits generated by the refund program will be distributed to all participating casinos. The question of whether Resorts would still have a competitive advantage if this program were instituted was identified as an issue at the first prehearing conference.

During the June 1979 tram hearing, a number of witnesses described several ways in which the trams could be used by a casino to gain a competitive advantage. To the extent possible, specific terms were suggested for inclusion in the contract between the City and Resorts to counter these possibilities. However, recognizing that a resourceful operator could always conjure an unanticipated method to turn control of the trams to its benefit, the Commission also demanded that a general prohibition be codified. Therefore, the City included, as part of its agreement with Resorts, the

conditions mandated by the Commission. (Exhibit C-1).[2] Among others is paragraph number 32 of the bid specifications which provides:

> The successful bidder will not manipulate the regular schedule of Tram operations in any way for the purpose of, or cause in [sic] the effect of, a competitive advantage for a Casino. This includes the establishment of a Tram turnaround where the patrons will not necessarily congregate in front of or in close proximity to a Casino, or in favoring a Casino by providing more frequent service to said Casino as opposed to other Boardwalk areas. [Exhibit C-1].

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2. The major operating conditions for the tram are found in the 1982 bid specifications which are incorporated in the contract between Resorts and the City. (Exhibit C-1). They are strikingly similar to those conditions summarized by Commissioner MacDonald in his 1979 opinion (pp. 12-14). The extant contract was signed on July 19, 1982. Pursuant to its terms, Resorts must, among other things, operate daily at least seven electrical or motorized trams on the Boardwalk for the period of three years terminating at 12:01 a.m. on August 1, 1985. The minimum required hours of operation are 10:00 a.m. to 5:00 p.m. year round, except from Memorial Day to September 15, when the required hours are 10:00 a.m. until midnight. Resorts may add additional hours if desired. No tram is allowed to remain standing except to pick up and discharge passengers. Trams are required to pick up and discharge passengers anywhere along the Boardwalk and are to operate between the Garden Pier and Albany Avenue. Trams must operate in the rolling chair lanes, cannot exceed four miles per hour, and may not pass one another in the same direction. The charge per ride may not exceed $1.00. Resorts must pay the City an aggregate of $726,000.00 in quarterly installments over a three year period. Additionally, if the annual gross income derived from the operation of the trams exceeds $275,000.00, Resorts shall pay the City a sum equal to 5 percent of the amount by which such gross income, less the Atlantic City luxury tax, exceeds $275,000.00 in a given contract year. Resorts also has the option to operate up to a maximum of 12 trams daily, but must pay the City an additional $100.00 per day for each additional tram operated above the minimum seven.

The broad language of this provision, especially when read in light of the concerns expressed in the Commission's 1979 decision, reveals a clear intent to prohibit any preferential or unequal use of the trams.

In 1981, the Commission found this forbidden inequality to exist because Resorts was able to provide the refund program at less cost than other casinos and because the cost differential was a direct result of Resorts' operation and control of the trams. More specifically, the basis for the Commission's finding that Resorts acquired a competitive advantage by reason of its tram fare refund program was that the increased ridership stimulated by the program, the "elasticity of demand," would help subsidize Resorts' operation of the trams. Other casinos wishing to run a tram fare refund promotion would enjoy no such off-setting benefit and would, in fact, be contributing their refund dollars to subsidize the tram operation, thereby benefitting Resorts.

As pointed out earlier, Resorts' new proposal for a tram fare refund program offers the following variation: tram profits, if any, which arise from operation of the refund program would be shared with participating casinos.

At the hearing on January 3, 1985, Resorts offered no evidence as to whether its operation of the tram was profitable or unprofitable. No statistics, no projections, and no financial information was offered. If the tram operation is unprofitable, then there will be no profits to share with other casinos. Thus, the refund program will benefit only Resorts because any casino offering a tram fare refund program will be out-of-pocket $1.00 for each patron to whom a refund is given

whereas Resorts' revenues will potentially increase because of additional ridership, thereby reducing the operating loss which Resorts would otherwise incur.

Resorts possesses the information which would demonstrate whether its tram operation is profitable or not. The licensee could have and should have presented reasonable projections about a tram fare program's expected profitability. Yet, Resorts has chosen to argue the present petition on an abstract level, claiming that if profits exist, they will be shared. Regretably, as noted, the financial figures which would have demonstrated profitability or the lack thereof were not offered to me for evaluation. Moreover, even if the tram were considered profitable during periods of peak ridership, the operation could conceivably be unprofitable in the colder months when casino hotels would perhaps be more inclined to offer tram fare refund programs. As a result, no profits would be available for distribution, and a competitive advantage, similar to the one found in 1981, would exist.

Certainly, the question of profitability is an important one since Resorts bottoms its argument on its willingness to share tram fare refund profits. In Exhibit S-1, Resorts and the Division stipulated that for the purpose of calculating payments by Resorts to other casinos participating in the tram fare refund program, "any amount paid by Resorts as refunds to tram patrons, and any amounts expended by Resorts to defray the costs of administering the ...program, will not be considered as a cost of operating the trams." Nevertheless, how profitability will be determined remains unclear. Indeed, I find Resorts' stipulation in Exhibit S-1 that the "basis upon which an accounting will be made by Petitioner to other casino

participating in the tram fare refund program will be clarified and satisfactory to the Commission and the Division," to be unacceptable. Profitability, according to Resorts, is the essential ingredient underlying the instant petition. Yet, the accounting formula to be used in determining such profitability is ambiguous and left for some uncertain future date. An essential element to Resorts' claim for relief cannot be segregated from the overall review process.

During the hearing, counsel for Bally's, a participant therein, offered as an exhibit, B-1, which contains hypothetical dollar figures. Apparently, it is an attempt to show that, even if a tram fare refund program were profitable, Resorts would still obtain a competitive advantage over other casinos. In its posthearing brief, Resorts seeks to counter the hypothetical assumptions and the monetary figures contained therein. I have reviewed the exhibit and the comments made about this exhibit. Quite simply, I do not find this exhibit helpful nor am I certain that its postulated premises are correct. If Resorts had presented to me detailed information concerning the financial operations of the tram, abstract discussions would be unnecessary. Unfortunately, they did not. However, in rendering this Report and Recommendation, I do not place any reliance upon Exhibit B-1.

During the hearing on January 3, 1985, Peter Bearse, an economist offered as a witness by Resorts, testified that the tram ridership was not necessarily elastic, that is, the institution of a tram fare refund program would not necessarily increase tram ridership. (T33-1 to 2). Further, even though Bearse conceded that he had developed no statistics with respect to tram ridership (T39-14 to 18), he declared that the Commission's premise of elasticity in tram ridership was

"implausible." (T39-20 to T40-2).

Mr. Bearse's testimony regarding elasticity was controverted by Mark Van Hartesvelt, Senior Vice President of Casino Marketing for Resorts, who stated that he expected tram ridership to increase (T75-10 to 16; T78-4 to T79-19; T80-25 to T81-2) once the refund program stated. He further suggested that tram ridership would remain constant in the colder months and during adverse weather conditions because of the refund program. (T78-19 to 24). I find the comments of Mr. Van Hartesvelt to be reasonable and sensible under the circumstances and more in line with the expected result of this promotion. Indeed, in its posthearing brief, Resorts freely acknowledges that in October and November 1981, when it was refunding tram fares, ridership increased. Resorts also points to its experience in operating a promotional booth at the Ocean One Mall as evidence supporting the thesis that a tram fare refund program will increase ridership. (See, Resorts posthearing brief, p.5).

Mr. Van Hartesvelt spoke quite candidly about the importance of the tram to Resorts. He observed that the Resorts casino hotel, located at a property the company freely chose to acquire and operate, had a "locational disadvantage" because it was at one end of the Boardwalk. (T70-20 to T72-8). Therefore, Resorts did not have that "critical mass" of people that traverse the center of the Boardwalk upon which to draw. (T71-8 to 11; T79-2 to 7). Hence, the tram assisted Resorts in mitigating this perceived locational disadvantage. (T75-7 to 10; T79-16 to 19). Resorts obviously views the tram and the refund program as part of an overall effort to lure patrons from other parts of the Boardwalk to its casino hotel facilit Therefore, Resorts seeks to use the tram as a marketing device

to bolster its competitive position. Resorts' true purpose is obvious. It was so stated by its counsel on December 1, 1981. (57-10 to 21). Resorts also frankly acknowledges in its posthearing brief (pp. 5-6), that it intends to utilize a tram fare refund program to offset its "locational disadvantage," and hence more effectively compete with other casinos.

By reason of its contract with the City to operate the trams, Resorts also possesses a competitive advantage that cannot be translated into monetary figures, that is, the ability to dictate or control marketing strategy. If no other casino were to undertake a tram fare refund program, Resorts would maintain an advantage, at least insofar as other casinos would bear the risk of not participating in the refund program. Peter Bearse observed that, if other casinos did not participate in the program, they would be placed at an economic disadvantage. (T38-3 to 4; T51-1 to 17).

If a casino must commence its own tram fare refund program in an attempt to counterbalance Resorts, Resorts is using its exclusive monopoly as a tool to unfairly compete with its neighboring Boardwalk casinos. This is especially so if the cost to Resorts is less than the cost to other participating casinos. As noted above, Resorts' scanty presentation has not demonstrated that equality in this competitive area will exist. To the extent that Resorts is in a loss situation it will be subsidized by the elasticity of ridership, especially during slow periods. Resorts alone controls participation in the program and can virtually compel other casinos to boost tram ridership. Benefits thus accrue to Resorts that do not necessarily flow to others.

By my comments in this opinion, I do not mean to imply that casinos should not fairly and aggressively compete with one another for patrons. Indeed, healthy competition and promotional activity benefits not only the casino industry, but the City, region, and State as well. The difference in the present matter is that the operator of an unusually important transportation monopoly seeks to use that privilege for its own primary benefit with detrimental effects flowing to others. See, Part IV D of this Report and Recommendation, infra.

In 1979, when the Commission permitted Resorts to accept the tram operation, the Commission contemplated that there could be "special arrangements" which involved the tram, as exemplified by charters and bulk sales. These programs, however, are giveaways to patrons who have already elected to visit a particular casino. They do not involve competition for the patronage of tram riders. In my opinion, neither the Hearing Examiner nor the full Commission contemplated that the tram monopoly would be used for "special arrangements" designed to attract patrons from the Boardwalk, as is contemplated here.

The operation of the tram has been entrusted to one casino operator which must run it not for its own ends but for the benefit of the City. Accordingly, even the appearance of a competitive advantage should be avoided. As the holder of a monopoly, Resorts has the benefit not only of a potential cost advantage, but also of inside information regarding scheduling, costs, profitability, and distribution of tram ridership. This

privileged status increases the negative image of one casino being able to use a critical transportation monopoly as a marketing tool against other casinos in an intensely competitive market. See also, Part IV D of this Report and Recommendation, infra.

Therefore, Commissioner MacDonald's express prohibition against any competitive advantage must override the suggestion in his report that "special arrangements" may be permissible. Given the importance of the tram and its continuous contact with all Boardwalk casino hotels, even the slightest competitive advantage becomes magnified. As Commissioner MacDonald observed: "...if the tram operator can manipulate the trams in its favor, the resultant advantage must be assessed in terms of a key transportation link and not a mere amusement ride." Boardwalk Trams opinion at 15. On the record as it presently exists, there is no basis to conclude that Resorts would not enjoy a competitive advantage if the present tram fare refund proposal is approved.

While I perceive that the Resorts' present proposal will result in unfair competition among casino hotels for patrons, there are larger concerns involving the tram which must be addressed. These concerns are discussed below.

D. Casino Domination of the Tourist and Convention Industries in Atlantic City

The first prehearing conference order set forth as one

of the issues to be addressed the question of whether use of the Boardwalk trams as a promotional tool by an individual casino or by the casino industry as a whole offended the statutory policy of the prevention of casino industry domination of the tourist and convention trade and of Atlantic City generally. The issue of casino industry dominance with respect to Resorts' use of the trams as a promotional tool, that is, the offering of tram fare refunds, was discussed at the Commission's public meeting of December 1, 1981. The Commission's decision regarding that initial tram fare refund program, however, did not expressly address the question of casino dominance. See, Order of Casino Control Commission dated December 22, 1981.

In the 1850's, a group of New Jersey businessmen financed the construction of a railroad connecting Camden with Atlantic City to aid in the development of the City as a seaside resort. Subsequently, Atlantic City established a national reputation as a resort city. C. Funnell, By the Beautiful Sea (1975), at pp. 3-23. Atlantic City's accessability and central location in the heavily populated metropolitan corridor combined to make the City one of the major convention centers in the United States. Regretably, the City did not maintain its prominence. Between 1930 and 1970, Atlantic City's population decreased dramatically. R. Smalley,

Master Plan Atlantic City (1976), at 8-9 (prepared for the Atlantic City Planning Board). Its annual median family income in 1970 languished beneath the State average. Id. at 17-18. The percentage of the City's families with incomes below the "poverty level" exceeded the percentage of all New Jersey families. Id. at 18. Unemployment and crime rose dramatically while decent housing and hotel rooms decreased. Depressed economic conditions were rampant throughout the City. C. Funnell, By the Beautiful Sea, supra at 142-144.

Despite the bleakness which descended on Atlantic City in the 1960's and 1970's, the natural resources of this City remained. The ocean, beach, and sea air are spectacular attractions. And, while manmade, the famed Boardwalk has achieved equal status and renown with these features. The New Jersey Legislature recognized that Atlantic City, with these attributes, could experience a rebirth and in 1976, when it convened to draft the Casino Control Act, it was hopeful that revitalization and redevelopment would occur.

The Legislature found the "tourist, resort and convention industry" to be a "critical component of [the State's] economic structure," N.J.S.A. 5:12-1(b)(1), and "replacement of lost convention, tourist, entertainment and cultural centers" to be "a program of critical concern and importance to the inhabitants of the State of New Jersey." N.J.S.A. 5:12-1(b)(3). As manifested by the emphatic language of the Act, the Legislature:

> Legalized casino gaming...as a unique tool of urban redevelopment for Atlantic City... [to] facilitate the redevelopment of existing blighted areas and the refurbishing and expansion of existing hotel, convention, tourist, and entertainment facilities... [to] encourage the replacement of lost hospitality-oriented facilities... [to provide] for judicious use of open space for leisure time and recreational activities ...and [to] attract new investment capital to New Jersey in general and to Atlantic City in particular. [N.J.S.A. 5:12-1(b)(4)].

To maximize capital investment benefits, the Legislature restricted the issuance of casino licenses to major hotels with convention facilities, N.J.S.A. 5:12-1(b)(5), defined minimum standards for these facilities, N.J.S.A. 5:12-83, and provided incentives to increase casino size by adding more hotel rooms and public space. N.J.S.A. 5:12-83(d). The Legislature vested the Commission with the authority to review architectural and site plans, N.J.S.A. 5:12-1(b)(11), -84(e), and required the Commission to promulgate rules and regulations governing advertisement, N.J.S.A. 5:12-70(o), (r), entertainment, N.J.S.A. 5:12-70(p), and the distribution of alcoholic beverages. N.J.S.A. 5:12-70(q). By delegating broad review and regulatory authority to the Commission, the Legislature sought to ensure, among other things, that gaming was merely a component of a new, revitalized Atlantic City, and not its dominant theme. N.J.S.A. 5:12-1(b)(5), -1(b)(13).

The Legislature anticipated the problems of growth aaccompanying the development of the gaming industry, so it provided this new industry with an active role to perform in the redevelopment process. Casino license applicants must establish that the facility's proposed location complies with all applicable zoning and planning laws. N.J.S.A. 5:12-84(e). All casino license applicants are required to submit with their proposals an analysis of the effect of the proposed casino operation on the environmental, economic, social, demographic, and competitive conditions of the City and the State. Ibid. The Legislature also developed a complex tax credit program to stimulate industry investment in the City, region, and State. See, N.J.S.A. 5:12-144 (amended and supplemented by P.L. 1984, c. 218, effective December 19, 1984).

The Resorts tram fare refund promotion raises broad issues regarding the proper role of the trams as part of the Boardwalk scene. The tram operation is unique. It is essentially a public transportation monopoly as well as an amusement feature of the Boardwalk. Peter Bearse acknowledged that the tram "shares the qualities of both" and that "one could make a strong case that it could be viewed as a public utility...." (T50-16 to 19). In a similar vein, Mark Van Hartesvelt of Resorts, testified that the company relies on the transportational aspects of the tram "to move people from the center of the Boardwalk down do [sic] Resorts." (T75-3 to 6).

Indeed, Mr. Van Hartesvelt noted at the hearing that in 1984 tram ridership was over 1.6 million people. For this reason, the use of the tram by Resorts or other casinos as a "marketing tool" has a significant effect on the Boardwalk area and the City.

In my opinion, subjugation of the trams to a casino promotion and by a casino hotel company franchised to operate them would offend the public interest and the policies of the Act. Visitors to Atlantic City will naturally be drawn to the Boardwalk. Movement along that thoroughfare is essentially limited to walking or riding the trams. Conventioneers especially may be expected to avail themselves of the tram service to observe the sights and to travel to and from Convention Hall and other destinations along the Boardwalk.

If a casino or casinos engage in promotional efforts involving the trams, then the average visitor or conventioneer will be induced to enter a casino room, or at the very least the casino hotel facility, simply because he has chosen to ride on the only available mode of convenient Boardwalk transportation. Since there is no reason why the casinos would have to limit their tram-related promotions to a refund of the $1.00 fare but could offer additional amounts of money or other services (indeed, Mark Van Hartesvelt testified that he could conceive of providing roundtrip reimbursement (T86-4 to 9)), an individual who seeks only transportation and sightseeing would be unduly influenced to patronize a casino hotel facility.

Such domination by a casino or casinos of this unusual public utility should not be allowed. This could effectively damage the ability of non-casino attractions along the Boardwalk to retain their expected share of customers or visitors. Although Peter Bearse stated that he did not believe that Boardwalk merchants would be affected adversely by the tram fare refund program (T52-24 to T57-15), Fred Klein, president of the Atlantic City Merchants Association, a participant in the hearing, felt differently. (T102-8 to 10). Mr. Klein believed, as I do, that the profitability of the tram is of little concern to Resorts, because Resorts acknowledges it views the tram as a promotion and a guarantee that Boardwalk visitors will reach Resorts at the east end of the Boardwalk. (T103-16 to 23). Mr. Klein stated it aptly when he contended that a tram fare refund "just further debilitates the circulation of the patrons throughout the City. That is our biggest concern." (T105-5 to 8).

Scott E. Becker, Esq. representing the Atlantic City Jitney Association, also a participant at the hearing, remarked that the tram is not merely an amusement but an important transportation system and that jitney operations which run on Pacific Avenue in Atlantic City would lose ridership and ultimately cease to exist, to the overall detriment of the City. (T111-6 to T117-17). Mr. Becker followed up his oral remarks with a two page letter statement dated January 9, 1985, in which he argued that Resorts' tram fare refund proposal constitutes "a giant step toward the domination of

transportation routes by a particular casino or casinos." He further wrote that should Resorts or other casinos be permitted "to provide free fares [on the Boardwalk], the expected effect on the [Atlantic City Jitney] Association would be disastrous and could spell the demise of the jitney as a form of transportation." As a result, a vital transportation system could be lost with, according to Mr. Becker, "a detrimental impact upon the residents living in the downbeach communities and lower Atlantic City as well as those living in the north and south inlets." Whether that would happen is speculative. But it is certain the tram is a vital transport in a carefully balanced system of inner-city transportation over Atlantic City's three main arteries.

Resorts asserts that the Act contains no express statutory policy requiring the Commission to prevent casino domination of the tourist and convention industries in Atlantic City. Resorts also seems to question whether such policy even exists.

The Commission derives its authority from the Act. It is also from this law that the Commission takes its charge: to oversee the rebirth of Atlantic City and to ensure the integrity of the casino gaming industry. Plainly, a primary obligation of the Commission is to ensure that only persons of honesty, integrity, and good reputation participate within the

casino industry. N.J.S.A. 5:12-63 to -72. This concern, of course, extends also to industry employees and vendors as well as to the labor organizations representing casino industry employees. N.J.S.A. 5:12-80 to -95.

The statutory duties of the Commission are, however, considerably broader than these integrity or "law enforcement" concepts. Indeed, in 1977, prior to the adoption of the Act, a group of senior staff personnel assembled by the Attorney General and Treasurer of New Jersey, emphasized that:

> ...the state interests to be served by a comprehensive regulatory scheme include more than the traditional law enforcement interest. Although the potential for casino-related crime is extensive, and the police interest is therefore pervasive, the broad impact which the industry will have, especially as a result of any shortcomings or failures, necessitate regulatory oversight in such non-law enforcement areas as protection of the resident population from social dislocation, protection of hotel and casino patrons from a consumer viewpoint, adjudicating the rights of competing casino and non-casino interests, protection of state revenue from all legal gambling activity, guarding against unwise development, negative environmental results, and inequitable strains on public resources, and finally, assuring that the promised revitalization of the tourist and convention industries does in fact take place, and is permanent. [Second Interim Report of the Staff Policy Group on Casino Gambling, (1977), at 2, emphasis added].

Thus, the Commission has the legal obligation to consider the impact of casino hotel operations upon the City and its region when approving the location and architecture of all casino hotels and public space within them. N.J.S.A. 5:12-84(e); see also, N.J.S.A. 5:12-1(b)(4) to -1(b)(5), -1(b)(10) to -1(b)(11), -27, -83, -98.

In interpreting a statute the goal is to ascertain the intent of the Legislature. State v. Grant, 196 N.J. Super. 470, 480-481 (App. Div. 1984). "All rules of construction are subordinate to that obvious proposition." State v. Provenzano, 34 N.J. 318, 322 (1961). Legislative intent, moreover, is to be perceived from the whole statute and all parts of the statute must be read so that they are in alignment with the intent of the entire act. Singleton v. Consolidated Freightways Corp., 64 N.J. 357, 362 (1974).

The express policy of the Act is to foster development of non-casino amenities and to prevent gaming from becoming the dominant industry which it is in other jurisdictions. As noted earlier, this is evident from the clearly enumerated legislative policy that casino gaming in New Jersey is viewed as "a unique tool of urban redevelopment." N.J.S.A. 5:12-1(b)(4). The Act further provides that casino hotels are to be maintained as an integral element of Atlantic City's hospitality facilities, "rather than as [an] industry unto themselves." N.J.S.A. 5:12-1(b)(5). It is largely from these two statutory provisions that the policy against casino dominance has been articulated by the Legislature. Furthermore, a most important underlying concern of this poli

is that the public should not be subjected to undue inducements to gamble to the detriment of other tourist and hospitality amenities of the City. See, N.J.S.A. 5:12-70(o).

The notion of preventing casino dominance also arises from other provisions of the statute as well. These provisions include N.J.S.A. 5:12-82 (approval of hotel and casino facilities); N.J.S.A. 5:12-98(b)(4) (no exterior visibility of the casino room); N.J.S.A. 5:12-100(b) (gaming equipment only permitted in the casino room); and N.J.S.A. 5:12-100(l) (prohibiting use of barkers to induce the public to enter a casino or to gamble).

Also relevant to the question of casino domination is N.J.S.A. 5:12-84(e) where the Legislature has charged the Commission with the important responsibility of assuring that casino hotels and their related facilities do not adversely affect the overall environment, "including, without limitation, economic, social, demographic and competitive conditions." The Commission has been given extraordinary powers to achieve the Legislature's will. See, e.g., N.J.S.A. 5:12-75.

The above policies would be frustrated if the tram were reduced to a mere pawn in the promotional rivalries of the Boardwalk casinos, and I believe that is precisely what the tram would become. Resorts' contention in its prehearing supplemental memorandum of law that N.J.S.A. 5:12-82(e), prohibiting any one casino licensee from holding more than three casino licenses, excuses them from any charge of

domination, is without merit. The mere fact that Resorts only presently operates one casino hotel does not give it alone, or the casino industry collectively, the right to unduly hinder or impede those non-casino amenities that now exist in Atlantic City or which seek to establish themselves as new or refurbished hospitality facilities. Indeed, if such impediments or hindrances become apparent, the Commission can exercise its authority to prevent this adverse effect from spreading. See, N.J.S.A. 5:12-84(e). Such a restrictive interpretation runs directly counter to the generous grant of authority to the Commission and to the overall purpose of the Act. Compare, Bally Mfg. Corp. v. N.J. Casino Control Comm'n., supra (where a similar, limiting argument based upon the existence of numerical restrictions in certain parts of the Act was squarely rejected).

Further, the fact that Resorts obtained the tram contract through a public bid is of little moment, except that it underscores its public nature. Nor is the fact that the City has incorporated in its contract with Resorts recommendations made by the Commission in 1979 (see Exhibit C-1) dispositive of the casino domination issue. As Commissioner MacDonald noted in 1979, (pp. 9-10), the interests of the Commission are different from those of the City in matters of public bidding. The Commission was charged by the Legislature with broad powers over casino licensees. The Commission must, therefore, exercise this authority to achieve the statutory goals of revitalization and redevelopment. Indeed, the Commission looks forward to the day when Resorts will be but a stop on a tram route progressing along a fully

restored east Boardwalk. The City is also concerned with its own redevelopment. Obviously, the Commission and the City should, have sought and continue to seek cooperation in the performance of their respective duties. However, here the City has made no claim and Resorts has failed to demonstrate that a conflict exists. Surely, the contract does not compel Resorts to exploit the tram as a promotional device.

Resorts is not interested in the tram per se, but as its counsel frankly remarked on December 15, 1981: "We're trying to encourage people to come into the Resorts Casino, hopefully, not to encourage them to ride the tram, by offering them a free tram ride." (T65-5 to 7).

At that December 15, 1981, public meeting, I noted the above comment of Resorts' counsel and stated that, in my mind, it raised the issue of casino dominance. (T69-12 to 15). Additionally, on December 1, 1981, I had offered previously the opinion that the Commission should prohibit the use of the tram as a marketing tool. (T114-4 to 18; T118-20 to 24). The Commission did not, however, subsequently address this issue in its decision. Accordingly, I believe the appropriate response of the Commission now with respect to use of the tram as a marketing tool is to declare that unique Boardwalk amenity and, to paraphrase Resorts, critically important transportation element, off-limits as a marketing device.

I have not been the only voice to suggest a limitation on the tram as a marketing tool. Indeed, on December 1, 1981, counsel for Playboy-Elsinore Associates suggested that the dignity of the renowned Boardwalk should be preserved and that the tram is "neutral ground" and should not be used as a marketing tool by any casino. (T82-11 to T92-21).

The important issue of casino dominance of the Boardwalk through use of the tram, which was reserved by the Hearing Examiner in 1979, is now appropriate for resolution. I conclude, therefore, that the tram should not be used as a marketing tool for the benefit of one casino, or the casino industry generally, to the detriment of the Boardwalk and Atlantic City.

V. CONCLUSION

Based upon my review of the entire record and considering the policies articulated by the Legislature in the Act, I find for the reasons expressed herein that the Commission has the jurisdictional responsibility to hear and resolve the instant petition. Additionally, this petition is not barred by the doctrine of res judicata.

I also find that Resorts has failed to demonstrate that the proposed refund program eliminates any competitive advantage accruing to Resorts as the tram operator. Moreover, in a larger sense, I believe that the tram, as a unique and vital mode of Boardwalk transportation, should be prevented from being turned into a promotional gimmick for the benefit of the casino industry.

Respectfully submitted,

Carl Zeitz
Commissioner

Dated: March 13, 1985

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INVENTORY OF EXHIBITS

S-1 - Stipulation Between Resorts International Hotel, Inc. and Division of Gaming Enforcement

A-1 - Letter Dated October 15, 1984, from Harry Jay Levin, Associate Counsel of Caesars Atlantic City Hotel Casino to Commission Senior Assistant Counsel Patricia Kerins

B-1 - Chart Entitled "Resorts' Tram Fare Refund Program" Submitted by Kenneth F. Oettle, Counsel for Bally's Park Place, Inc.

C-1 - Letter Dated January 2, 1985, from Matthew H. Powals, Atlantic City Solicitor to Commission Senior Assistant Counsel Patricia Kerins, Including Exhibits Attached Thereto

WITNESSES

Peter Bearse
Mark Van Hartesvelt

PARTICIPANTS AT THE HEARING PURSUANT TO N.J.A.C. 1:1-12.6

Kenneth F. Oettle, Esq. on behalf of Bally's Park Place, Inc.

Fred Klein, President of the Atlantic City Merchants Association

Scott E. Becker, Esq. on behalf of the Atlantic City Jitney Association

STATEMENTS FILED

Letter dated January 7, 1985, from Thomas D. Farrell, Esq. on behalf of Marina Associates and Harrah's Associates.

Letter dated January 9, 1985, from Scott E. Becker, Esq. on behalf of the Atlantic City Jitney Association.

Letter dated January 11, 1985, from Kenneth F. Oettle, Esq. on behalf of Bally's Park Place, Inc.

PRE AND POST HEARING BRIEFS

As set forth in the Report and Recommendation.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 83-388
OAL DOCKET NO. CCC 1427-84

STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
RESORTS INTERNATIONAL HOTEL, INC., LAURA SHOPE, DEALER; CHARLES McCALLION, FLOOR PERSON; CHESTER CALVIN MITCHELL, PIT BOSS; WILLIAM MICHAEL GALLION, CAGE MANAGER; AND FEGEYNS (OSCAR) DYKES, ASSISTANT SHIFT MANAGER.	:

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission; and both parties having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its publ meeting of February 6, 1985; resolved to modify the initial decision for the reasons and in the particulars set forth in the final Commission decision issued simultaneously with this order, which is incorporated herein as if set forth in full,

IT IS on this 18th day of June 1985, ORDERED that the initial decision is modified as follows:

(1) The respondents Resorts International Hotel, Inc. and William Michael Gallion violated N.J.A.C. 19:45-1.25(e) by accepting one hundred travelers checks in $1,000 denominations without first determining their validity by performing the necessary verification as required by the regulation;

(2) That portion of the initial decision (at 4) stating that respondent Mitchell "was generally present during the transaction," referring to the acceptance of the subject travelers checks at Blackjack Table #7 on May 2, 1983, is rejected. The record clearly establishes that Mr. Mitchell was not present when the decision was made to accept the travelers checks at the blackjack pit.

IT IS FURTHER ORDERED that the respondent Resorts International Hotel, Inc. pay a civil penalty in the amount of $125,000, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that the casino key employee license held by respondent William Michael Gallion is suspended without pay or compensation of any kind for ten work days; and

IT IS FURTHER ORDERED that the casino key employee license and casino employee licenses held by respondent Fegeyn Dykes are suspended without pay or compensation of any kind fo seven work days; and

IT IS FURTHER ORDERED that the credit records on Yong Han Kim, maintained by Resorts International Hotel, Inc. and entered into evidence as P-22 at the hearing conducted on July 10, 1984, at the Office of Administrative Law be sealed; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondents, the Division of Gaming Enforcement, and Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 83-388
OAL DOCKET NO. CCC 1427-84

STATE OF NEW JERSEY :

DEPARTMENT OF LAW & PUBLIC SAFETY, :

DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

RESORTS INTERNATIONAL HOTEL, INC., : LAURA SHOPE, DEALER; CHARLES McCALLION, FLOOR PERSON; CHESTER : CALVIN MITCHELL, PIT BOSS; WILLIAM MICHAEL GALLION, CAGE MANAGER; AND: FEGEYNS (OSCAR) DYKES, ASSISTANT SHIFT MANAGER. :

COMMISSION DECISION

APPEARANCES:

Paul M. O'Gara, Esq. (Sterns, Herbert and Weinroth) for Respondents Resorts International Hotel, Inc., Laura Shope, Charles McCallion, Chester Calvin Mitchell, William Michael Gallion and Fegeyns (Oscar) Dykes.

Kevin F. O'Toole, Deputy Attorney General and Dennis Dooley, Deputy Attorney General for Division of Gaming Enforcement.

Dennis Daly, Senior Assistant Counsel and Christina E. Weaver, Assistant Counsel for New Jersey Casino Control Commission.

This matter concerns a seven-count complaint filed by th Division of Gaming Enforcement (DGE) on November 9, 1983, against Resorts International Hotel, Inc. (Resorts) and five o its employees. The complaint alleged a number of violations o

the Casino Control Act, N.J.S.A. 5:12-1 et seq.[1] and Commission regulations, N.J.A.C. 19:40-1.1 et seq. An additional alleged violation was raised at a prehearing conference. The incidents in question occurred in May 1983 when an Oriental businessman who was regarded as a "high roller" patron visited Resorts and played the game of blackjack.

Pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 5:12-107(a)(1), the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case. Following the hearing, the OAL issued an initial decision on October 11, 1984,[2] in which Resorts and two of the individual respondents, Gallion and Dykes, were found to have violated Commission regulations. The ALJ recommended the assessment of an administrative penalty of $100,000 against Resorts and a one-week suspension of the casino key employee licenses of Gallion and Dykes. The ALJ dismissed all charges against the remaining respondents as well as some of the allegations against Resorts and Gallion.

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1. Throughout this opinion, provisions of the Act may be cited by section number only. The complete citation may be obtained by adding the prefix "N.J.S.A. 5:12- ."

2. Subsequent to filing, a corrected copy of the initial decision was issued rectifying certain clerical errors in the original. A copy of the corrected version is appended hereto for convenient reference. A1 to A8.

Counsel for the DGE and the respondents filed exception to the initial decision. The respondents also filed a reply the Division's exceptions. We entertained oral argument on January 9, 1985 and, at our public meeting of February 6, 198 resolved to modify the initial decision to find additional violations, to increase the sanction imposed upon Resorts to total of $125,000, to increase the sanction imposed upon respondent Gallion to require the suspension of his credentia for ten working days and to specify that respondent Dykes's credentials be suspended for seven working days. We now promulgate this written opinion to more fully expatiate the reasons underlying our disposition of this case.

Except as expressly modified hereafter, we adopt all of the findings of fact and conclusions of law contained in the initial decision. Therein, the ALJ dismissed counts I, II an III of the complaint which had charged respondents Resorts, Shope (a blackjack dealer) and McCallion (a floorperson) with allowing the patron to place a "double down" wager after the third card had been dealt to all hands in violation of sectio 99 and 100(b) of the Casino Control Act and pertinent Commission regulations. See N.J.A.C. 19:47-2.6 and -2.10. Having reviewed the entire record created in the OAL and havi considered the exceptions filed by the DGE, we are satisfied that the ALJ's recommended disposition of these charges is appropriate. Accordingly, we affirm the dismissal of the

charges raised in counts I, II and III, essentially for the reasons stated in the initial decision.

Counts IV through VII, as well as the additional violation raised in the prehearing conference order, concerned a different incident and series of transactions involving the same patron in the early morning hours following the evening on which the "double-down" incident occurred. Because we are not in complete accord with the ALJ's recommended disposition of these allegations, we shall recite our understanding of the operative facts which gave rise to the charges.

At approximately 3:30 a.m. on May 2, 1983, the patron, who purportedly spoke little or no English, returned to the gaming table at Resorts with his personal secretary who was able to communicate in English. Oscar Dykes, the acting shift manager, had already closed down the blackjack tables in the baccarat pit, where the patron had played earlier, because there were no patrons and closing time was a half-hour away. When the patron arrived, Mr. Dykes ordered that BJ-7 be opened. The patron wanted to exchange travelers checks for chips at the table, but Mr. Dykes told him that the transaction had to be conducted at the cage. However, the patron became irritated and registered a protest through his secretary to the effect that he previously had been permitted to conduct such a transaction at the table. Mr. Dykes thereafter telephoned cage manager William Michael Gallion, and asked whether travelers

checks could be accepted at the table. Mr. Gallion told Mr. Dykes that it was permissible and outlined the procedure to follow so that there would be a record of the transaction. Mr Dykes initiated the process and the patron's secretary began t sign and countersign the travelers checks.[3] There were 100 checks in denominations of $1,000 each, issued by BankAmerica. When approximately 25 checks had been signed and countersigned Mr. Kim became impatient to gamble and Mr. Dykes thereafter directed that $100,000 worth of chips be advanced to Mr. Kim i order that he could begin gambling. By the time the secretary had completed the signature process, the patron had lost his entire supply of chips.

Respondent Mitchell, who had been on a break since befor the patron arrived at the table, returned and resumed his duties as pit boss. His relief had already filled out a request for credit in preparation for the transfer of the travelers checks to the cage, consistent with the procedure outlined by Gallion. Dykes and Mitchell proceeded to lay out the travelers checks on the gaming table so that the documents could be photographed by the surveillance department, again in accordance with Gallion's improvised procedures. Mr. Dykes then arranged for a security officer to help him transport the travelers checks to the cage. There, Mr. Gallion issued a credit slip, which Dykes deposited in the drop box at the table, and a chip transfer slip to record the transfer of the

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3. That the checks had not been signed when purchased is a fact of some significance as will be developed.

travelers checks from the fill bank (normally a depository for chips and coins only) to the main bank for deposit.

At the hearing, Resorts, Gallion and Dykes admitted that their conduct was in contravention of Commission regulations and the ALJ so found. More specifically, the ALJ found that Resorts, Gallion and Dykes had violated N.J.S.A. 19:45-1.20(a)[4] by advancing chips to the patron in exchange for travellers checks that had not been completely executed[5]

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4. N.J.A.C. 19:45-1.20 provides in pertinent part:

> (a) Whenever a gaming table in a casino is open for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino shall cause or permit gaming chips, coins or plaques to be added to or removed from such table inventory during the gaming day except:
>
> 1. In exchange for cash, or issuance copies of Counter Checks presented by casino patrons in conformity with the provisions of N.J.A.C. 19:45-1.18 and 1.25;
>
> 2. In payment of winning wagers and collection of losing wagers made at such gaming table;
>
> 3. In exchange for gaming chips or plaques received from a patron having an equal aggregate face value; and
>
> 4. In conformity with the Fill and Credit Slip procedures described in N.J.A.C. 19:45-1.22 and 1.23....

5. It should be noted that a violation of N.J.A.C. 19:45-1.20(a) would have occurred even if all the checks had been signed prior to acceptance. The regulation does not include cash equivalents among the enumerated items for which chips may be exchanged at the table. We view the fact that the checks were not completely executed prior to the advancement of chips as an aggravating factor that heightens the seriousness of the violation.

and violating N.J.A.C. 19:45-1.25(e)[6] by performing a function which is restricted to cage personnel by accepting t checks at the pit area.[7]

These conclusions are supported by ample credible evidence in the record, most notably the respondent's admissions, and we therefore adopt them as our own. The ALJ dismissed the charges against respondent Mitchell (count VII) a determination with which we also agree, but we cannot endor the judge's statement that Mr. Mitchell "was generally preser during the transaction." A-4. Our review of the record reveals that Mr. Mitchell was not present when the decision w made to accept the travelers checks at the pit. He was on a break and did not return until after the checks has been accepted and exchanged for chips. While it is true that he

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6. N.J.A.C. 19:45-1.25 provides in pertinent part:

> (e) Cash equivalents, as defined in N.J.A.C. 19:45-1. shall only be accepted at the cashiers' cage by gener cashiers. Prior to acceptance of a cash equivalent from a person, the general cashier shall determine th validity of such cash equivalent by performing the necessary verification for each type of cash equivale and such other procedures as may be required by the issuer of such cash equivalent....

7. Although the regulations quoted in the margin are the most specific provisions that the respondents violated, we shou also add that the same conduct is violative of sections 99 and 101 of the Act as well as other internal control regulations governing cage and pit procedures.

thereafter helped to lay out the checks on the gaming table, we do not share the view advanced by the Division that such action by Mitchell should give rise to Mitchell's liability. The violation had already occurred. Any protest Mitchell might have made would not have altered the situation. With the noted clarification, we adopt the ALJ's findings which resulted in his dismissal of the charges against Chester Mitchell.

Our disagreement with the ALJ's disposition of the issue concerning the alleged violation of N.J.A.C. 19:45-1.25(e) by reason of the failure to properly verify the travelers checks is of much greater significance. Contrary to the ALJ's recommendation to dismiss this charge, we find that a violation did occur, for which respondents Resorts and Gallion must bear responsibility.

Initially, we must interpret N.J.A.C. 19:45-1.25(e) to establish what verification procedures were necessary under the circumstances of this case. As provided by the regulation, "[p]rior to acceptance of a cash equivalent from a person, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures that may be required by the issuer of such cash equivalent." N.J.A.C. 19:45-1.25(e).

The ALJ acknowledged the correct standard, viz. "what is necessary is what is reasonable under the circumstances involved...." State v. Greate Bay Hotel and Casino, Inc.,

al., Docket No. 83-17 (Commission decision July 25, 1984). However, the ALJ made several crucial errors in his findings o facts concerning this issue which undoubtedly led him to an erroneous conclusion.

The ALJ stated that the BankAmerica travelers checks were signed in Gallion's presence in accordance with BankAmerica requirements,[8] and that there was "no other evidence in the record concerning requirements to verify Bank of America travelers checks." A-6. These statements are at variance with the facts. The patron's secretary signed both the original signature line and the counter signature line while sitting in the baccarat pit. Moreover, Mr. Gallion was not present when the signatures were affixed. At all times relevant to this issue Mr. Gallion remained in the cage area.

The Division presented into evidence a pamphlet entitled "Facsimiles and Acceptance Procedures" which sets forth the BankAmerica travelers checks verification procedures It was the testimony of Mr. Gallion that, when a previously countersigned BankAmerica travelers check is presented, a recipient is required to obtain from the presentor "another signature or copy of a signature" and request another form of identification. Mr. Gallion also testified that he did not

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8. According to the ALJ, "The overwhelming testimony at the hearing was that the travelers checks issued by the Bank of America need only be signed in the presence of the recipien of the checks, and the signature and counter signature on each check compared with each other." A-6.

follow these requirements when the fully executed travelers checks were delivered to the cage by Mr. Dykes. It is, we find, readily apparent that the requirements of N.J.A.C. 19:45-1.25(e) were not met in this instance. The checks were effectively accepted by Resorts in the pit area. This alone is sufficient to support a finding of a violation since the regulation requires that verification precede acceptance and that both functions be performed by a general cashier.

Further, when the checks reached Mr. Gallion in the cage, he apparently compared the signature on the original signature line with that on the counter signature line of each of the checks and found, not surprisingly given the facts as we now know them, that both signatures on each check were made the same individual. However, these checks presented to Gallion were previously countersigned travelers checks for which BankAmerica had prescribed a separate verification procedure. The purpose of this is apparent, the special procedure provides a means of assuring that the person who is cashing the travelers checks is the one who had purchased them.

The State has an interest in requiring casinos to verify cash equivalents. Invalid cash equivalents are usually stolen instruments on which the thief has forged the rightful owner's signature. No extended discourse is required to conclude that any fraud perpetrated against a casino has an adverse impact upon the integrity of the regulatory process of casino operations within New Jersey.

Resorts also urged that its "verification" actions were reasonable in this instance because they were well acquainted with the patron. However, it was not the patron wh signed the checks; it was his secretary, about whom little was known by Resorts personnel. In fact, he was never identified by name. Thus, we have no occasion here to consider whether purported familiarity with the patron would justify acceptance without strict compliance with the issuing bank's requirements.

Based upon the foregoing, we reject the ALJ's dismissal of this charge and find that a violation of N.J.A.C. 19:45-1.25(e) did occur when proper verification of the cash equivalents was not performed.

SANCTIONS; Resorts

In assessing sanctions against Resorts, the ALJ combined the violation he found regarding improper acceptance of cash equivalents together with the violation involving the improper advancement of $100,000 worth of chips to the patron before the remaining travelers checks had been executed. He then recommended that Resorts "be penalized the amount of mone which it won as a result of the transaction; namely $100,000." A-5. While this approach has some measure of superficial appeal, it ignores the statutory guidelines for the imposition of monetary penalties and also runs counter to our policy of imposing separate sanctions for separate violations of the Act or its regulations.

Pursuant to N.J.S.A. 5:12-129(5), the maximum financial penalty to be assessed against a casino licensee for a single violation is $50,000. It is a truly remarkable coincidence that the patron lost $100,000 and the judge found two violations thereby making his recommended sanction within the statutory limits. However, the liability of Resorts should be governed by the seriousness of its transgressions and the other guidelines listed in section 130.

As evidenced by the foregoing discussion, Resorts is guilty of violating N.J.A.C. 19:45-1.20(a) by virtue of its having advanced chips to the patron at the table in exchange for cash equivalents. We view the transgression as a very serious offense. It involves a patent violation of a specific internal control regulation that could not reasonably have been the subject of any uncertainty. The entire episode can be viewed as yet another example of a casino catering to the whims of a high roller patron in disregard of the regulatory process, not unlike a number of cases we have decided in the past, e.g. State v. Boardwalk Regency Corporation, Docket No. 81-32 (Commission decision, January 4, 1983); State v. Greate Bay Hotel & Casino, Inc., et al. supra. and State v. Playboy-Elsinore Associates, et al., Docket No. 83-16, (Commission decision, October 10, 1984).

Considering that the respondents' conduct jeopardized the integrity of the regulatory process, the seriousness of the offense and the absence of any excuse on the part of the high ranking employees of Resorts who were responsible for the violation of N.J.A.C. 19:45-1.20(a), we hereby impose the maximum monetary penalty allowed under the Act - $50,000.

Resorts is also guilty of violating N.J.A.C. 19:45-1.25(e) in two particulars. The first concerns the acceptance of travelers checks at the table away from the secure area of the cage. This too is a serious violation as recognized by the Commission in two prior decisions, State v. Greate Bay Hotel and Casino, Inc., et al., supra and State v. Playboy-Elsinore Associates, et al., supra. As was recognized in each of these cases, transactions performed by the cage cashier are required to occur at the cage in order to safeguar the assets involved as well as to facilitate the monitoring ar control of these activities by the Commission and the Division When a transaction is moved from the cage to a casino gaming table witnout the approval of either of the regulatory agencies, it is an egregious breach of internal control and security requirements. Consistent with our action in the Sand and Playboy cases, we impose a similar sanction for this equally serious violation - $50,000.

The second aspect of the violation of N.J.A.C. 19:45-1.25(e) concerns the failure to verify cash equivalents. The regulation expressly requires that verification occur prio to acceptance and that both functions be performed by cage personnel. Moreover, respondent Gallion acknowledged that he did not follow the requirements of the issuer when the fully executed checks were eventually presented to him. In these circumstances and considering the relevant criteria, we hereby impose a monetary penalty of $250 per check or $25,000. The total monetary penalty assessed against Resorts for the three violations found is $125,000.

William Michael Gallion, cage manager

The ALJ ordered a one-week suspension of Mr. Gallion's casino key employee license based upon his conclusion that Mr. Gallion was liable for the two violations found by the ALJ. However, because the ALJ dismissed the charge regarding the failure to verify the cash equivalents, his recommended penalty does not take into account Mr. Gallion's integral participation in the violation of the verification requirements of N.J.A.C. 19:45-1.25(e). We believe a greater penalty should be imposed based upon our finding that a violation of this regulation also occurred. Therefore, we hereby suspend the casino key employee license of William Michael Gallion for a period of 10 working days.

Oscar Dykes, acting shift manager

By regulation, the shift manager "shall be the supervisor assigned to each shift with the responsibility for the supervision of table games conducted in the casino." N.J.A.C. 19:45-1.12(a)(7). Based upon the two violations which the ALJ found Mr. Dykes had committed, Dykes's conduct constitutes a serious misfeasance of his assigned duties. We conclude that the ALJ's recommended sanction of one week's suspension of his casino key employee license is appropriate. However, we modify it for the purpose of greater specificity - seven working days.

CONCLUSION

For the reasons set forth above, the initial decision of the Office of Administrative Law is modified in accordance

with this decision. Specifically, we find that respondent Resorts has committed three separate violations for which we impose a civil monetary penalty totalling $125,000. For their culpability in these violations, respondents Gallion and Dykes shall have their casino key employee licenses suspended for a period of ten and seven days respectively. In all other particulars, the initial decision is affirmed.

NEW JERSEY CASINO CONTROL COMMISSION

WALTER N. READ, CHAIRMAN

E. KENNETH BURDGE, COMMISSIONER

JOEL R. JACOBSON, COMMISSIONER

DATED: June 14, 1985

While I concur with my fellow Commissioners in all other aspects of this opinion, I cannot join in that portion which imposes the maximum fine of $50,000 for a violation of N.J.S.A. 19:45-1.25(e) by reason of the acceptance of traveler checks in the pit area. Considering the unique circumstances, I would have found a substantially lower penalty to be appropriate.

CARL ZEITZ, COMMISSIONER

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1427-84

AGENCY DKT. NO. 83-388

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

RESORTS INTERNATIONAL HOTEL, INC., LAURA SHOPE, CHARLES MCCALLION, CHESTER CALVIN MITCHELL, WILLIAM MICHAEL GALLION, AND OSCAR DYKES,

Respondents.

Kevin O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Paul O'Gara, Esq., for respondents (Sterns, Herbert & Weinroth, attorneys)

Record Closed: August 23, 1984 Decided: October 11, 1984

BEFORE **NORMAN D. SMITH,** ALJ:

The Division of Gaming Enforcement filed a seven-count complaint before the Casino Control Commission charging the various respondents with one or more of the following offenses:

New Jersey Is An Equal Opportunity Employer

1. Allowing a patron at a black jack table to double down after the third card has been dealt in violation of N.J.A.C. 19:47-2.6 and N.J.A.C. 19:47-2.10

2. Accepting $100,000 in travelers checks in the baccarat pit instead of at the cashier's cage, in violation of N.J.A.C. 19:45-1.25(e);

3. Advancing gambling chips to a patron prior to receipt of payment for them in violation of N.J.A.C. 19:5-1.20(a); and,

4. Failing to properly verify the authenticity of travelers checks in violation of N.J.A.C. 19:45-1.25(e).

All of the respondents requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

At 12:45 a.m. on the morning of May 1, 1983, a Japanese businessman who had made regular junkets to Resorts International was at a reserved black jack table in the baccarat pit. He was playing all seven spots and was thus the only player at the table. He was wagering $10,000 on each spot during each hand of play. Because of the amount of his wagers, the floor person supervising the baccarat pit, the respondent Charles McCallion, stood next to the dealer, respondent Laura Shope, and watched the game closely. The Japanese businessman, whom I will refer to as the patron throughout the rest of this decision, spoke no English. He communicated through a series of grunts and hand motions that the Resorts International personnel seemed to understand, at least for simple transactions. More complicated transactions were negotiated by an assistant who did speak English.

At the time in question, the game was proceeding at a rapid pace, placing commensurate pressure upon both dealer and supervisor. The patron would indicate a hit by tapping the table with his left hand. He would indicate the desire to double down by placing a stack of chips into the betting circle on the table with his right hand. Doubling down doubles the wager after two cards have been dealt, and permits only one additional card to be dealt. General strategy suggests that one might double down when the first two cards total eleven, in hopes that the third card will be a ten or picture card,

thus giving the player a score of 21. The patron followed this strategy all evening, doubling down whenever the first two cards totaled eleven. Because doubling down is basically a wager on the value of the third card, the regulation above-cited requires the wager to be made before the third card is dealt and seen by the patron.

On the hand in question, each of the seven spots at the table had been dealt two cards. The dealer, Laura Shope, then began to deal a third card to each spot, only after receiving the patron's instruction. The first four spots were dealt without incident. On the fifth spot, the patron had two cards totaling eleven. Consistent with the rapidity that characterized the patron's play all evening, the patron began to tap the table with his left hand indicating his desire to be dealt a third card, and, almost simultaneously, he moved his right hand forward from his side with a stack of chips totalling $10,000 indicating he wished to double down. The dealer saw the motion of the patron's left hand before she saw his right hand move forward with the chips. As soon as she saw the patron's left hand tap the table she began to deal the third card. The third card was dealt and the chips reached the betting circle virtually simultaneously. When the patron saw the third card dealt he protested vigorously with a loud grunt and a look up at Mr. McCallion, the supervisor. The patron obviously knew that he could not double down after the third card was dealt and was protesting the quick deal that might prohibit him from making his double down wager. Mr. McCallion, stationed to the dealer's left, had a slightly better view of the patron's right hand than did the dealer. He knew that the patron had been doubling down all evening whenever the first two cards totaled eleven. Mr. McCallion, performing a role analogous to that of an umpire in a baseball game, judged that the patron had begun to make his double down wager before the third card had been exposed. Mr. McCallion nodded to Ms. Shope to allow the double down wager which, incidently, was to the detriment of the casino since the patron won the bet. All of this took place under the watchful eye of Casino Control Commission inspector Salvatore Colangillo who stood a mere eight feet from the gaming table during the entire transaction. His presence was known to the parties to the game.

Based upon the foregoing findings of fact, I **CONCLUDE** that neither Laura Shope, Charles McCallion, nor Resorts International through its agents, permitted the patron to double down after seeing the third card. All three respondents are, therefore, not guilty of that charge and the first three counts of the complaint are **DISMISSED.**

On the following morning, May 2, 1983, at approximately 3:30 a.m., one-half hour before closing time, the patron returned to the same table in the baccarat pit and sat down at the black jack table. During the three or four days of the current junket, the patron had lost his entire line of credit of $1,500,000, and had lost an additional temporary extension of credit of $500,000, bringing his total losses to $2 million. This time, the patron was accompanied by his English-speaking assistant who presented $100,000 in travelers checks at the black jack table and wanted to purchase chips with them. Oscar Dykes, the assistant shift manager, was in the pit, about to order it closed for the evening. He decided to let it remain open until the 4:00 closing time in order to accommodate the patron. Mr. Dykes told the patron that he would have to take the travelers checks to the cashier's cage. The patron balked and appeared irritated. Either from the patron's grunts or from the explanation of his English-speaking assistant, Mr. Dykes learned that the patron did not want to waste time taking the travelers checks to the cashier's cage, since little time remained until the casino closed. Mr. Dykes called William Gallion, cage manager, for advice as to the legality of accepting travelers checks at the gaming table. Gallion told Dykes that such transaction was permissible, and the two men devised a method of documenting the transaction. The transaction was, in fact, meticulously documented, so that not a question remains as to what occurred. In addition to filling out self-explanatory records which completely describe the transaction the travelers checks were laid out on a nearby table and video-taped through security cameras. Further, the entire operation of laying the travelers checks out and counting them was done under the watchful eye of a casino investigator. In fact, the investigator's questions concerning the transaction were honestly and fully answered by Mr. Dykes. There was no attempt to conceal what was being done as a courtesy to the patron.

The travelers checks required signatures on the front and the back of each check. There were 100 travelers checks, each in the denomination of $1,000. The patron's assistant began to endorse the front and back of each check and the process was taking more time than the patron cared to waste. Under pressure from the patron, Mr. Dykes allowed the chips to be advanced to the patron although only approximately 25 travelers checks had thus far been endorsed. The travelers checks were issued by the Bank of America. Chester Mitchell, the pit boss, was generally present during the transaction and helped lay the travelers checks out on the table for counting and video-taping. However, he acted under the direction of his supervisor, Mr. Dykes, and took no part in the decision making himself.

With regard to the charges against Chester Mitchell, I **CONCLUDE** that, based upon the foregoing findings of fact, Mr. Mitchell was not guilty of any violation of casino regulations. He was not aware of the entire transaction, and mechanically aided his supervisor, Mr. Dykes, who was responsible for the decision to accept the travelers checks. Thus, the complaints against Mr. Mitchell are **DISMISSED.**

The respondents Resorts International, Oscar Dykes and William Gallion admit that they did violate two of the above-cited regulations by accepting travelers checks at the table instead of at the cashier's cage, and by advancing chips before all of the travelers checks were negotiated. The evidence justifies the respondents' admission of guilt. Both Mr. Dykes, and Mr. Gallion insist that they acted out of a lack of understanding of regulations. However, I **CONCLUDE** that both Mr. Dykes and Mr. Gallion were aware of the regulations, or are charged by law with their knowledge. The regulations are clear, that chips must not be advanced, and that travelers checks and other cash equivalents can be negotiated only at the cashier's cage. No misinterpretation is possible of these regulations. I find that Mr. Dykes and Mr. Gallion, and through them Resorts International, knowingly violated those two regulations to accomodate the patron, an unusually high roller. It is true that there was no attempt to hide the transaction, that the transaction was done in front of a Casino Control Commission investigator and was explained to him, that the transaction was meticulously documented. Nevertheless, it was a knowing violation by executives of high rank who, I **CONCLUDE,** knew and understood the regulations. The $100,000 was lost by the patron within approximately ten minutes.

The Attorney General suggests no specific penalty and so I am left to impose a penalty that seems appropriate to me. I recognize that the Casino Control Commission may well have other criteria as to penalties, and that my recommendation is merely advisory. Nevertheless, because the executives were of high rank, because they knowingly and intentionally violated casino regulations, because a large sum of money was involved, it seems to be appropriate that Resorts International be penalized the amount of money which it won as a result of the transaction; namely, $100,000. It seems further appropriate that the two individuals who made a decision to violate the regulations, Mr. Dykes and Mr. Gallion, each have their license suspended for one week. It is so **ORDERED.**

The final charge, that the validity of the travelers checks was not authenticated, is **DISMISSED.** The regulations in question merely requires that "prior to the acceptance of a cash equivalent from a person, the general cashier shall determine the validity of such cash equivolent by performing the necessary verification for each of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent." N.J.A.C. 19:45-1.25(e). The regulations do not specify what constitutes necessary verification. The overwhelming testimony at the hearing was that travelers checks issued by the Bank of America need only be signed in the presence of the recipient of the checks, and the signature and counter signature on each check be compared with each other. This was done in the presence of Mr. Gallion. There is no other evidence in the record concerning requirements to verify Bank of America travelers checks. Travelers checks issued by other companies may have other requirements according to the contractual agreement between the issuer and the casino. However, no additional requirement, such as calling the issuer or seeking other identification, was established in the record before me. The requirements that were established were met. If the Commission wishes to, it may promulgate more specific regulations regarding verification. However, it is neither fair nor appropriate to punish someone for violating speculative standards that are not clearly delineated, where the person has acted in good faith on the information before him. Resorts did not intend to cheat itself of $100,000 by accepting fraudulent checks and it took the action it deemed necessary, which action seems to me to be reasonable. The highest degree of caution is not required under the term "necessary verification." Only that verification is required which seems reasonable and appropriate under the circumstances. When someone is punished for violating reasonable standards, those standards must be broad enough to include the full range of reasonable action, and not the view of any specific individual or agency. Thus, the charge of failing to verify the travelers checks is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

10/11/84
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Principal Legal Analyst

Mailed to Parties:

OCT 16 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

ml/E

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WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

IN THE MATTER OF THE APPLICATIONS :
OF RESORTS INTERNATIONAL HOTEL, :
INC. FOR RENEWAL OF CASINO :
LICENSE AND LECTROLARM CUSTOM : OPINION
SYSTEMS, INC. AND INTERNATIONAL :
INTELLIGENCE, INC. FOR RENEWAL OF :
CASINO SERVICE INDUSTRY LICENSES. :

Walter N. Read, Chairman

E. Kenneth Burdge, Vice Chairman

Carl Zeitz, Commissioner

Joel R. Jacobson, Commissioner

APPEARANCES

FOR RESORTS INTERNATIONAL HOTEL, INC.:

Joel H. Sterns, Esq.
John M. Donnelly, Esq.
Edward Fitzpatrick, Esq.

FOR DIVISION OF GAMING ENFORCEMENT:

Thomas R. O'Brien, Director
Anthony J. Parrillo, Deputy Director
John E. Adams, Jr., Deputy Attorney General

FOR CASINO CONTROL COMMISSION:

John R. Zimmerman, Senior Assistant Counsel
Steven M. Ingis, Assistant Counsel

This matter is brought before the Commission pursuant to the application of Resorts International Hotel, Inc. (RIH) for renewal of its casino license. In addition, International Intelligence, Inc. (Intertel) and Lectrolarm Custom Systems, Inc.

(Lectrolarm) have applied for renewal of their casino service industry licenses. RIH, Intertel and Lectrolarm are wholly-owned subsidiaries of Resorts International Inc. (Resorts).

In order to obtain renewal of their licenses, each applicant must satisfy all of the criteria for initial licensure as set forth in the Casino Control Act, N.J.S.A. 5:12-1 et seq. (the Act). Most of those criteria, as they relate to both casino licensure and casino service industry licensure, are dealt with in reports submitted to the Commission by its staff and by the Division of Gaming Enforcement (Division), and the Commission's findings with respect thereto are set forth in a resolution to be issued shortly. The opinion will deal only with the casino license application, and specifically with the effect on that application of certain activities conducted by Resorts through its subsidiaries operating in the Bahamas. Those activities were the primary focus of a 12-day hearing held before the Commission. Before setting forth our findings and conclusions with respect to the Bahamian issues, we will briefly describe the setting in which the issues arose and the legal criteria by which they must be evaluated.

On September 5, 1983, NBC news aired allegations, stemming from a Justice Department report, that Bahamian Prime Minister Lynden O. Pindling and members of his cabinet were receiving bribes from drug smugglers operating in the Bahamas

(D-22).[1] As a result of this telecast, a Royal Commission of Inquiry was convened in the Bahamas to investigate the charges. The Commission of Inquiry began taking testimony in both public and in camera session in December 1983, and released a report on December 14, 1984 (D-15).

Everette Bannister, a paid consultant to Resorts and a close friend and confidant of the Prime Minister, figured prominently in the evidence regarding influence peddling and drug corruption (D-15 at 240-256; T1131-1132; T1202-T1203). During the course of the Commission of Inquiry hearings, it was also revealed that certain payments made by Resorts to Bahamian law firms had been channeled to the Prime Minister through Bannister (D-15 at 102-103, 111-112). These revelations prompted the Division to conduct an investigation.

On January 9, 1985, the Division filed with the Commission a Report on Certain Activities of Resorts International, Inc., in the Bahamas. This document was submitted pursuant to the Division's statutory responsibility to investigate the qualifications of license applicants and to provide the Commission with all information necessary to rule on license applications. See N.J.S.A. 5:12-76. Although the report

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1. "D" refers to the evidentiary exhibits offered by the Division of Gaming Enforcement.

"R" refers to evidentiary exhibits produced by Resorts.

"T" refers to the transcript of this proceeding, consecutively paginated, from January 31, 1985, through February 26, 1985.

assisted the Commission in focusing its inquiry, it is not evidence of the matters stated therein. In fact, the Act requires a hearing on every casino license application, and each applicant must meet the statutory criteria regardless of the tenor of a Division report. See N.J.S.A. 5:12-87(a).

The Act specifically provides that each casino license applicant bears the burden of establishing by clear and convincing evidence that it, its holding companies, and all individuals and entities required to qualify, meet the criteria for licensure. Those affirmative criteria are set forth in N.J.S.A. 5:12-84 and 89. Of particular note here, in view of the issues raised in the Division's report, are the standards of good character, honesty and integrity, N.J.S.A. 5:12-84(c) and 89(b), business ability, N.J.S.A. 5:12-84(d), and also financial stability, integrity and responsibility, N.J.S.A. 5:12-84(a).

In setting forth good character, honesty and integrity as a qualification standard, the Act recites several types of information which should be considered in determining whether that standard is met. "Business, professional and personal associates" are included in this recitation. N.J.S.A. 5:12-84 and 89. Such associations are not themselves a standard of qualification, but are relevant because they may reflect upon actual character and fitness. Whether an association does reflect upon present character and fitness depends upon many factors, including the time of the association, its duration, its purpose, its intensity, its attenuation through third parties, the character of the associate, the associate's reputation, the

applicant's knowledge of such reputation or character, the applicant's exercise of reasonable efforts to determine the suitability of its associates, termination of the association and the reasons for termination. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License (1979), at 10 (Resorts Opinion). Only after all the significant circumstances are taken into account can it be determined whether an association casts an unfavorable light upon the applicant or person to be qualified. The mere fact that some innocent relationship may have existed with persons of unsuitable character would not alone indicate a failure to meet the standard of good character, honesty and integrity. Of course, it is incumbent on the applicant to demonstrate either that it had no involvement with notorious or unsavory persons or that such involvement indicates no lack of good character, honesty and integrity.

In setting forth financial stability, integrity and responsibility as a qualification standard, the Act addresses not only economic viability, but also honesty, prudence, and forthrightness in business dealings and procedures. Resorts Opinion at 7.

The Act not only requires that a casino license applicant satisfy the affirmative license criteria by clear and convincing evidence, but also provides that a license will be denied it if the applicant or any person required to qualify

suffers from any of the disqualification criteria enumerated in N.J.S.A. 5:12-86. In this case, the Division has alleged that Resorts' officials engaged in bribery by directing payments through Bahamian law firms to Everette Bannister and ultimately the Prime Minister. Such allegations, if proven, would constitute a section 86 disqualifier. N.J.S.A. 5:12-86(b) and (g). However, a casino license application will be denied upon section 86 disqualification only if the credible proofs in the whole record indicate the existence of a disqualification by a preponderance of the evidence. If, however, the credible proofs in the whole record fail to indicate the existence of the disqualification by a preponderance of the evidence, those proofs may nonetheless be considered as to whether the applicant has established by clear and convincing evidence the affirmative qualification criteria of sections 84 and 89 of the Act. Resorts Opinion at 12-13.

In the foregoing summary we have attempted to touch briefly upon some of the licensing standards of the Act. A fuller explanation of the licensing criteria and the decisional process is contained in the Chairman's written instructions to the Commission. These instructions, and the principles set forth therein, are now well established in the context of casino license hearings, having been adopted in the Resorts Opinion in 1979 and applied in all succeeding casino license application proceedings. At the present hearing, the instructions were provided to the parties, and they were afforded an opportunity

to file exceptions. No exceptions were filed. The instructions have therefore been made a part of the record of this casino license hearing and are incorporated by reference in this opinion.

We note, however, that the broad scope of the licensing standards reveals that no precise, mechanical formulation is possible or even desirable. In deciding whether RIH should receive a license, each Commissioner must bring the overall sense and purpose of the Act to bear on the particular facts as he finds them. Careful evaluation of the evidence must be combined with a conscientious effort to achieve the true intent of the law.

We now turn to the issues raised in the Division's report. We will first discuss the relationship of Resorts and certain of its officials to Everette Bannister, and then turn to the two payments from Resorts to Bahamian law firms, portions of which found their way to Bannister and ultimately to the Prime Minister or his creditors.

RELATIONSHIP TO EVERETTE BANNISTER

In 1963, Resorts, which was then known as the Mary Carter Paint Company, made its first investment in the Bahamas. The company acquired approximately 2,000 acres of land near Freeport, on Grand Bahama Island, for residential development and land sales (T1434). In 1966, Resorts bought Paradise Island from Huntington Hartford and committed to a development program which included a 500-room hotel, a 100-room hotel, a casino, and a bridge linking the island with the City of Nassau on New Providence Island (R-21a; T138; T518; T1435). Due to financing

problems encountered by Resorts, construction of the bridge was undertaken by the Paradise Island Bridge Company (the Bridge Company), a private corporation headed by Resorts' chairman and chief executive officer, James M. Crosby (T518 to T521; T1437 to 1439). The bridge, though separately owned, eventually became a pivotal aspect of Resorts' operations on Paradise Island and produced almost $1 million dollars in earnings annually (T541).

The bridge was completed in March 1967 and the Paradise Island Casino opened in December of that year, under the authorization of a ten-year "Certificate of Exemption" granted to Resorts, through its subsidiary Paradise Island Ltd. (PIL), by the Bahamian government (T156; T165). The authorization to conduct casino operations on Paradise Island was renewed for another ten-year period on January 3, 1978 (T223).

Shortly after Resorts undertook its commitments on Paradise Island, the political climate of the Bahamas changed dramatically. In the 1967 general election, the governing United Bahamian Party was defeated by the Progressive Liberal Party (PLP), headed by Prime Minister Pindling (T158 to T160).

Resorts was directly affected by the change in government. Its management had established a working relationship with the previous regime, but found itself confronted with a new government of which it had no knowledge. I.G. Davis, Jr., Resorts' president and chief operating officer, soon became personally acquainted with Wallace Whitfield, the second most important member of the PLP (T161). Resorts also employed the services of David Probinsky, an American who

had established a public relations firm in the Bahamas and h been active in the campaign to bring the PLP to power (T162).

These efforts to establish relations with the new government proved futile, however, when the faction of the PLP led by Whitfield split from the main party to form a coalition with the members of the former ruling party. In the 1972 election, the PLP retained power. The government viewed Resorts suspiciously as a result of its association with the Whitfield faction and its practice of making political contributions to both parties (T163 to T164). Mr. Davis in particular was held in disfavor because of his association with Whitfield (T164).

As a result, Mr. Crosby came to the Bahamas in 1973 in an attempt to establish improved relations with the governmen (T1441). Mr. Probinsky arranged for Mr. Crosby to meet with the Prime Minister. At that meeting, Mr. Crosby assured the Prime Minister that Resorts would cooperate with the government and would in the future make contributions only to the ruling party (T166 to T167; T1442).

In 1974 Resorts made efforts, with the government's encouragement, to assist the development of a Bahamian national airline (T167 to T168; T1445 to T1446). Pindling, acting through Probinsky, suggested that Resorts contact Everette Bannister, who had been involved in the operation of a charter airline known as Bahamas World Airlines (BWA). BWA had failed financially,

defaulting on loans from the Bahamas Commonwealth Bank totallin approximately 11 million dollars (T168 to T169; T2446). Howeve Resorts entered into a joint venture with Bannister in a new company called BWA 1974 (T169 to T172; T1447 to T1451). While majority ownership of BWA 1974 was to be in a group of Bahamians including Bannister, and while Bannister was to serve as chairma of the company, Resorts retained full responsibility for operating the planned airline (R-4; T454). Resorts was to inves $100,000 for its 40% ownership interest and 50% share of profits (T171 to 173). In fact, Resorts invested a total of $125,000 from November 1974 to February 1975 in BWA 1974 (T171 to T172; T1457). Resorts subsequently invested an additional $40,000 in the BWA 1974 venture in 1978, to fund two flights from Europe to Freeport (T1458 to T1459; T1713 to T1714).

Shortly after entering into the joint venture agreement Resorts brought in an experienced airline executive, Lewis Dymond, to advise it as to the feasibility of the project (T1452 to T1454). Mr. Dymond had worked in several capacities, including pilot, during twenty-four years of employment with National Airlines. He was then engaged to head Frontier Airline as president and chief executive officer, serving from 1962 to 1969 (T441 to T442).

Mr. Dymond advised Resorts that BWA 1974 would be unable to compete successfully with an existing airline, International Air Bahamas (IAB), a subsidiary of Icelandic Airlines (T441 to 450; T1454 to T1455). As a result of Mr.

Dymond's advice, Resorts engaged in extensive negotiations designed to form a joint venture between IAB and BWA 1974 to fly passengers from Europe and the United States to the Bahamas (T1455 to T1456; T1558 to T1560). Under this proposed joint venture, majority ownership would again be held by a group of Bahamians, including Bannister (T452). However, as in the case of BWA 1974, Resorts was reluctant to entrust operation of the airline to Bahamian interests because of their lack of experience. Therefore, under the proposed agreement, IAB was to have full operating responsibility (T454).

At the time of these negotiations, IAB's license to land in the Bahamas was due to expire and Resorts reasonably believed, based partly upon information provided by Bannister, that the license would not be renewed by the government. As it turned out, IAB's license was renewed in late 1975, and the negotiations between BWA 1974 and IAB were terminated (T464 to T465; T1456; T1564).

During the negotiations between BWA 1974 and IAB, Bannister attempted to obtain a more influential role in the proposed company (D-34, D-35). Dymond testified that he was not alarmed by Bannister's efforts in this regard, and that he had formed a favorable impression of Bannister, particularly as a businessman. Dymond also testified that all of the money invested by Resorts in BWA 1974 was expended for proper business purposes (T461 to T467; T505).

Mr. Dymond impressed us as an experienced and knowledgeable airline executive, and as a totally credible witness. On the basis of all of the evidence presented to

us concerning BWA 1974, particularly Mr. Dymond's testimony, we find that Resorts' involvement in this venture was entirely legitimate. There is simply no basis in the evidence to lead us to conclude that BWA 1974 was used by Resorts to pass any improper payments to Bannister or anyone else, or that Bannister's conduct in the affair should have placed Resorts on notice that he was of questionable character and integrity.

With the demise of the airline project, Resorts decided in 1975 to engage Bannister as a paid consultant for PIL, with a salary eventually reaching $50,000 per year (T196; T1456 to T1460; D-10). Although the agreement was never put in writing, Bannister remained as a consultant until his termination in October 1984, following the Commission of Inquiry revelations.

In 1975 Bannister was widely recognized as an entrepeneur and as a prominent member of the Bahamian community with acquaintances in government and business. He was a member of the PLP governing council, a body of 50 to 60 persons, including members of the house of assembly and prominent business people (T197 to T198). Resorts perceived Bannister as being in a strategic position, through his contacts in government and business, to advise Resorts with respect to government attitudes concerning matters of interest to the company. In effect, Bannister would serve as Resorts' emissary to the government and also evaluate the government's reaction to Resorts' proposals (T197 to T202; T1459; T1477). As a well known entrepeneur, Bannister would also apparently be in a position to bring business proposals to Resorts (T202; T1073). Thus, Bannister

served as a lobbyist and as a political and business advisor (T203; T1072 to 1073).

One of the business opportunities advanced by Bannister was Las Palmas, a small resort complex owned by Crowhill Development, a company controlled by Bannister. As Barton Bethel, the Director General of Tourism for the Bahamas, testified, the government encouraged Resorts, as a major employer in the Bahamas, to make investments in the underdeveloped outer or "family" islands (T694 to T695). Resorts investigated several possible projects and ultimately determined to invest in Las Palmas, on Andros Island, primarily because this investment would be less costly than the other alternatives (T1463). In 1976 Resorts contracted to manage the property. The parties agreed that Resorts would have to recapture its costs before Bannister began receiving any profits (T207 to T212). Resorts decided in December 1984, as a result of the Commission of Inquiry hearings, to sever all ties with Bannister, including terminating its interest in Las Palmas. (R-20; T1520 to T1521). Resorts did not recoup any of its investment, and suffered losses of $1,547,000 for operating expenses, improvements and maintainence costs (D-45; T1138).

We do not consider Resorts' involvement in Las Palmas, or the eventual loss of its investment, to reflect negatively upon the company. We accept Resorts' representation, and that of Mr. Bethel, that outer island investment was encouraged by the government, and that due to the primitive nature of these islands, investments such as Las Palmas were strictly long-term

ventures, with little likelihood of immediate economic return (T695 to T698).

Thus, neither the BWA 1974 matter nor the Las Palmas investment lead us to conclude that there was anything untoward about Resorts' association witn Bannister, or that this association reflects negatively on the character and integrity c Resorts or its officials. However, there are certain additional matters which we must consider before reaching an ultimate assessment of the Resorts-Bannister relationship. These additional matters involve allegations raised by a 1982 Parliamentary Select Committee known as the Lightbourn Committee and Bannister's involvement with a businessman named Victor Sayyah and possibly with an alleged associate of organized crime named Sorkis Webbe.

In order to explore these issues it is necessary to giv some background on Resorts' activities on Grand Bahama Island in the late 1970's and early 1980's.

In January 1978 Resorts, through its subsidiary Grand Bahama Management Limited, began operating the El Casino in Freeport, Grand Bahama, the second largest population center in the Bahamas (T221 to T227). This operation was conducted under a ten-year management contract between Resorts and the government-owned Hotel Corporation of the Bahamas. The contract imposed an obligation upon Resorts to build within five years a 250-room hotel on a parcel of land, known as Tract A, adjacent tc the Lucayan Beach Hotel (R-212; T224; T241; T1063 to 1064). The plan was for Resorts to operate the El Casino until the government completed its reconstruction of the Lucayan Beach property, at which time Resorts would move its casino operations

from the El Casino to the Lucayan Beach location (T224 to T225; T1061). In anticipation of this transfer, Resorts negotiated an agreement in 1980 with Holiday Inns for the purchase of its hotel near the Lucayan Beach for $7,250,000 (R-102; T1064 to T1065). The proposal was aborted, however, in December 1980, when the government refused to grant approval because it was reluctant to permit Resorts to exercise such concentrated control over the tourism industry (R-190; T1070).

After the Holiday Inn purchase was rejected, Resorts made a series of additional proposals to the government with respect to hotel and casino operations on Grand Bahama Island. However, these proposals were also rejected, and Resorts ultimately decided to try to extricate itself from its obligations under its contract with the Hotel Corporation (T1[illegible] to T1083). In addition, in 1980 the government announced plans to expand the number of casinos in the Bahamas, including increasing to two the number of casinos operating in Grand Bahama Island. Under this plan casinos would operate at both the Lucayan location and the existing El Casino (T237; T257). This two-casino policy was contrary to Resorts' understanding when it began operating the El Casino in 1978 (T237). Resorts believed from past experience that two casinos could not operate profitably in Freeport (T242). Thus, in 1981, having failed to convince the government to permit the Holiday Inn purchase or to accept various alternatives to the two-casino proposal, Resorts decided to attempt to assign its management contract regarding the El Casino and avoid its commitment to construct the new hotel.

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An opportunity to do so presented itself in September 1981, when Sayyah approached Crosby with the idea of purchasing Resorts' interest in the contract (T1088). Crosby requested Robert Peloquin, President of Intertel, to conduct a background investigation of Sayyah (T1088). Peloquin's examination revealed that Sayyah was a wealthy businessman with no criminal record (T1088 to T1089), and did not reveal any unfavorable information with respect to Sayyah (T1088 to T1089). However, we find that Peloquin's efforts in this area were initially unsatisfactory, since by that time members of Webbe's family had been involved with Sayyah in applying for a gaming license in the Bahamas. However, Peloquin did know of Webbe's unsuitable reputation, and when Peloquin learned from Perry Christie, Chairman of the Bahamian Gaming Board, in February 1982, of the connection between Sayyah and Webbe, he immediately notified Crosby. However, by that time the deal with Sayyah had been abandoned (T1095 to T1096). A tentative agreement had been reached with Sayyah in December 1981 for $5,000,000 but it was never executed, partly because the government refused to approve the deal and partly because of a disagreement between Crosby and Sayyah over terms of the transaction (T1090 to T1092; T1487).

In late 1982, after the unsuccessful attempt to sell the El Casino to Victor Sayyah, Resorts agreed to pay the government $2,500,000 to withdraw from its obligations on Grand Bahama, including the commitment to build a hotel (R212 to R222; T237 to T247; T1090 to T1105; T1484). By that time Resorts was particularly anxious to terminate its obligations on Grand

Bahama, because it was convinced that continued operations under the management contract would be unprofitable, and because it was in imminent danger of breaching its obligation to build the new hotel (T1099 to T1105; T1478 to T1479).

While it is unfortunate that Peloquin did not discover Sayyah's connection to Webbe at the time Crosby was negotiating an assignment of the managerial contract to Sayyah, we credit the testimony of Peloquin and Crosby that they were unaware of that connection, and therefore do not find that Crosby's willingness to deal with Sayyah reflects negatively on his character.

However, the Division also suggests that Bannister had ties to Sayyah and Webbe, which should have alerted Crosby to dismiss Bannister as a Resorts consultant. This issue must be considered in the context of the Lightbourn Committee hearing

In early 1982, Michael Lightbourn, a member of the opposition party, had made serious allegations in the House of Assembly, involving influence peddling by Bannister and Abraham Lieber, an American with substantial business interests in the Bahamas, including associations with Bannister (T1355). Lieber's company, Amherst International, Limited, loaned $1,000,000 to BWA 1974 from late 1978 to February 1981, and at one time owned 30% of BWA 1974 (D-9 at 34). The Select Committee was appointed in January 1982 to investigate Lightbourn's charges, and issued its report in April 1982 (D-9).

During the Committee hearings, at which Crosby was present, it was revealed that Sayyah had loaned $500,000 to BWA 1974 (D-9 at 58). The loan was made after Resorts had ceased its involvement with the airline, but nonetheless revealed a

relationship between Bannister and Sayyah. However, Crosby testified before the Committee (D-9 at 55; D-10 at 27), and before us (T1629 to T1631; T1675), that this relationship did n concern him, and did not lead him to conclude that there had be a conflict of interest between Bannister's duties to Resorts an to Sayyah. We find no reason to question Crosby's testimony in this regard, or to conclude that Crosby should have dismissed Bannister because Sayyah loaned money to BWA 1974.

With respect to Webbe, there is simply no evidence before us, in the Lightbourn Committee report or elsewhere, of any connection between Bannister and Webbe.

The Lightbourn Committee's investigation also included several charges directly involving Resorts. These charges were that (1) Bannister agreed at a meeting in the Phillipines with Abraham Lieber to coerce Crosby into disposing of Resorts' Paradise Island assets to Lieber at a fraction of their actual value; and (2) Bannister attempted to pressure Resorts into relinquishing control to Lieber of the Pastiche Discotheque that operated adjacent to the company's Paradise Island Casino. In addition, the Committee examined allegations that Lieber made numerous payoffs to cabinet ministers, civil servants and Central Bank officials, and that Bannister and Lieber agreed to obtain government permission to exercise all of the oil and mineral rights in the Bahamas (D-9).

Upon learning of the charges being investigated by the Committee, Resorts had conducted an internal investigation, including an interrogation of Bannister, who vehemently denied all of the charges (T1492). After examining the record regarding these allegations, including the Committee's report, we are convinced that the matters under investigation by the Committee were of such a nature that Resorts was able to evaluate them from its own experience and knowledge, and to determine that the allegations were unfounded. We accept as credible the testimony of Mr. Crosby that there was no pressure exerted by Bannister or anyone else to dispose of Paradise Island assets (T1492 to T1493). In fact, the only negotiations between Lieber and Crosby regarding Resorts' assets involved the possible sale of the Ocean Club, which Resorts determined not to pursue (T233). We also accept the testimony of Keith Duncombe, Chairman of the Bar Council, President of the National Bar Association of the Bahamas, and an active member of Lightbourn's party, that the Committee was politically motivated and specifically attempted, albeit unsuccessfully, to embarrass the government (T1359 to T1361). Moreover, it is significant that the Committee made no recommendations concerning Bannister, did not find any improper conduct or influence peddling by Bannister or Lieber (T636; T1113; D-9 at 39; 57-58), and determined that the charges pertaining to Lieber making payoffs were "totally and absolutely untrue" (D-9 at 86). Thus, we conclude that the Lightbourn Committee hearing did not constitute a reason for Resorts to

terminate its relationship with Bannister.

Bannister has been described during this hearing as a "wheeler-dealer" (T2163 to T2164; D-8 at 45), who was oftentimes controversial in his business and other activities. (D-3; D-15; T1118). From everything we have heard and read in the evidence, we have no difficulty in concluding that Bannister is a person of unsuitable character (D-3). This certainly came to light during the Commission of Inquiry hearings in 1984, which revealed that Bannister had been involved in a variety of unsavory activities, including taking bribes from known drug smugglers (D-15). After these revelations surfaced, Resorts promptly terminated its relationship with Bannister (T1517). In fact, Resorts acted two months prior to the release of the Commission of Inquiry's report in December 1984.

The Division's concern regarding Bannister's association with Resorts stems from the Act's requirement that all applicants and persons required to be qualified must demonstrate their good character, honesty and integrity. N.J.S.A. 5:12-84 and 89. Resorts' association with persons of bad character or reputation might reflect negatively upon its own character. Thus, the critical issue regarding Resorts' relationship with Bannister is what Resorts knew or reasonably should have known with respect to him prior to the Commission of Inquiry's disclosures.

We are satisfied from the credible proofs, including the testimony of Crosby, Peloquin and Murphy, that it was not until

1984, through the Commission of Inquiry's proceedings, that Bannister's unsuitability became known to the company. Our conclusion in this regard is corroborated by the testimony of Bahamian residents, namely, Lincoln Hercules, Director of Security of Resorts' Paradise Island Casino and a former member of the Royal Bahamas Police Force; Paul Thompson, Corporate Director of Security for Resorts in the Bahamas and a former member of the Bahamian Police Department, and Keith Duncombe. All of these witnesses testified that prior to 1984 they had no basis to believe that Bannister was engaged in unlawful activities, and we find their testimony credible (T1352; T1383; T1531 to 1536; T1789 to T1794). Indeed, Mr. Thompson indicated that he and other members of the law enforcement community were surprised at the revelations concerning Bannister arising fro the Commission of Inquiry (T1542 to T1543).

Peloquin testified that on three or four occasions Perry Christie asked him why Resorts did not disassociate from Bannister (T1241). However, we believe Peloquin's testimony that Christie did not make any specific allegations of misconduct on Bannister's part; that Peloquin asked Christie to give him a reason for disassociating from Bannister but did not receive any, and that Christie was a political and personal adversary of Mr. Bannister (T1257; T1338; T1343). Therefore, we find that Peloquin's conversation with Christie did not provide a basis to alert Resorts to Bannister's unsuitable character.

We specifically accept Crosby's testimony that he retained Bannister for his usefulness as a consultant on Bahamian government and business affairs (T1459 to T1460). In our

judgment, based upon the totality of circumstances, it is not improper and indeed, it is perfectly understandable, why Mr. Crosby would want to retain the services of someone who could serve as a liaison to the Bahamian government. By the same token, there is difficulty in identifying his worth to the company, because, at least from the record before us, it appears that his advice concerning the attitudes of the government, such as the anticipated government approval of the proposed Holiday Inn transaction and the relicensing of IAB, was often wrong and his business propositions, such as BWA 1974 and Las Palmas, resulted in losses for Resorts. We must emphasize, however, tha the evidence does not support the notion that Bannister was used by Resorts for any unlawful or nefarious purpose.

This does not mean that we fully countenance Resorts' handling of what may be termed the Bannister affair. It is readily apparent that Bannister's role as a consultant with respect to the attitudes of the Bahamian government on matters o concern to Resorts placed him in a prominent and highly visible position. In light of Bannister's somewhat controversial reputation, as well as the prominent position in which Resorts placed him as its liaison to the government, Resorts should certainly have exercised greater diligence in investigating the background and character of this individual. At a minimum, thei arrangement should have been reduced to writing.

We must add, however, that at no time prior to 1984 was Resorts confronted with reliable information to suggest that Bannister had engaged in unlawful or otherwise unsavory activities. Rather, Resorts' failure was not to recognize the need for careful scrutiny of an individual to whom it had entrusted such significant responsibilities.

In summary, despite Resorts' lack of diligence in investigating Bannister, it is clear from the record that when Resorts learned of the revelations made by the Commission of Inquiry, it promptly terminated its consultancy arrangement with Bannister and severed all business dealings with him. This is not a situation where, confronted with clear evidence of the undesirable character or reputation of an individual with whom Resorts did business, the company elected to ignore that information in furtherance of business objectives. On the basis of the entire record before us, we cannot conclude that Resorts' dealings with Bannister reflect negatively on the character and integrity of the company or its officers. If Bannister was an unsuitable associate prior to the Commission of Inquiry's disclosures, Resorts did not know it.

We now come to the two major transactions at issue. One involved a $120,000 payment by Resorts on February 23, 1981, through its subsidiary, PIL, to J.A.H. Duffus, an attorney in the Bahamas. The second involved the payment of a $700,000 finder's fee on March 31, 1980, to Julian Maynard, another Bahamian attorney, as part of the sale of the Bridge Company to a company

known as BDM. In both instances, part of the money paid to the attorneys was disbursed to Bannister and ultimately to the Prime Minister or his creditors. The principal representatives of Resorts, James Crosby, I.G. Davis, Jr., Charles Murphy and Robert Peloquin, have steadfastly denied that they had any knowledge whatsoever of the funneling of payments to Bannister or Pindling (T1075; T1139; T647; T1522; T253). The parties agree that the credibility of this testimony is crucial to our ultimate resolution of this case. We will discuss each of these transactions as they relate to the instant proceeding.

THE DUFFUS PAYMENT

J.A.H. Duffus initially came to the attention of Resorts when he represented Bannister in the BWA 1974 negotiations. After the negotiations with IAB terminated, Resorts placed Duffus on a $50,000 per year retainer. The retainer included responsibilities for all legal work relating to PIL and associated companies. However, real estate conveyances and litigation were not included as part of the retainer, and for such work Duffus would be paid separately (T591; T626). Crosby and Murphy described Duffus' legal work for the company in favorable terms, emphasizing the timeliness of the work performed and the efficient manner in which Duffus conducted himself, particularly in contrast to certain other legal practitioners in the Bahamas (T592; T1583). Duffus was an attorney for the Prime Minister (T1880; T2179 to T2180) as well as Bannister (T1962 to 1963; T2206).

Duffus undertook certain legal responsibilities for Resorts that went beyond the parameters of his retainer agreement, including his work with respect to Resorts' operation of the El Casino in Freeport, Grand Bahama. He was instrumental in drafting the El Casino operating agreement, and did the legal work on the proposed sale of the Tract A parcel (T595). Although he did not directly participate in the negotiations concerning a proposed purchase by Resorts of the Holiday Inn of Freeport, Duffus was responsible for approving and revising legal documents relevant thereto, and for the investigation of title (T606). We note that Resorts provided considerable documentation demonstrating that Duffus performed the legal work on these various matters (R-36 to R-112).

In addition to the services which Duffus rendered on these matters, in early 1981 Resorts anticipated that he would be called upon to do a considerable amount of work with respect to certain proposals which Resorts had made to the Bahamian government concerning casino and hotel operations on Grand Bahama Island and Paradise Island. These proposals were contained in three letters from Resorts to the government Hotel Corporation, all dated February 9, 1981 (D-30 to D-32; R-201 to R-203). The proposals were subsequently rejected by the government on May 22, 1981 (T619), although discussions continued for several months thereafter (R-208; T620).

On February 23, 1981, Duffus approached Robert Peloquin and asked for an advance of $120,000 for work to be performed in connection with Resorts' three letter proposals (T1083 to T1085; T1211). The testimony of Peloquin, Murphy and Duffus indicates

that Duffus was aware of the contents of the three letters prior to his meeting with Peloquin (T616; T1083; T1969). We accept Mr. Duncombe's testimony that the request for an advance against fees was an acceptable practice in the Bahamas (T1375). At that time, Peloquin, although not an officer or director of Resorts, was instrumental in the management of Resorts' operations in the Bahamas (T1058). Peloquin told Duffus to provide him with a written request for the fee. When Duffus left Peloquin's office, Peloquin used the opportunity to contact Charles Murphy to determine if the request for an advance should be honored (T1084). Murphy advised Peloquin that he had no problem in approving such a payment (T1084). Murphy testified that since Duffus had earned a considerable amount of money for work relating to the Holiday Inn and Tract A transactions, for which he had not been paid, and since Duffus would be responsible for additional work in connection with the February 9, 1981, proposals, there was no question in his mind that a $120,000 payment was justified (T593). Specifically, Murphy indicated that Duffus would have been entitled to $109,000 for work performed concerning the Holiday Inn transaction (T613) and an additional $12,000 for Tract A, according to the accepted fee scale utilized in the Bahamas (T967 to T968). Murphy's testimony concerning the fee scale was corroborated by Duncombe (T1364 to T1369).

When Duffus returned later that day with a written request for payment, Peloquin issued a check for $120,000 from PIL to Duffus' law firm, Rolle, Knowles and Company (D-48; T1085). After the proposals in the February 9, 1981, letters were

rejected by the government, Duffus eventually advised Peloquin that the $120,000 would represent full payment for all of the work performed in connection with the various matters described above (T2094).

The record reveals that Duffus retained only $15,000 of the fee for himself, and on February 24, 1981, paid $105,000 to Yasmar Investment Limited, a company owned by Bannister (T2104). On February 27, 1981, Bannister paid $91,000 of this money to Arnold Cargill, a contractor working on the Prime Minister's house. The $91,000 was credited by Cargill to the Prime Minister's account (D-15 at 111). In testimony before the Commission of Inquiry, Bannister maintained that this payment was related to an obligation arising from the Prime Minister's interest in BWA (D15 at 108; T1160; T2030).

Inspector Frank Richter of the Royal Canadian Mounted Police, who was an investigator for the Commission of Inquiry, testified that Duffus told him that PIL had paid him $120,000, of which he kept $15,000 for legal fees and paid $105,000 to Yasmar. According to Richter, Duffus said he made this payment to Yasmar on the instructions of his client, and when asked who gave those instructions, replied that he thought it was either Crosby or Peloquin (T2460 to T2461). We find the testimony of Inspector Richter totally credible in all respects.

The crucial question then becomes whether Duffus spoke the truth when he told Richter that he acted upon instruction

from either Crosby or Peloquin in passing the $105,000 to Bannister.

Peloquin, Murphy and Crosby all testified that it was not until the end of July 1984 that they learned that a part of the payment to Duffus had been forwarded to Bannister and ultimately to the Prime Minister (T593; T1640 to T645; T1124; T1514). Peloquin testified that on July 26, 1984, he was informed by George Myers, president of PIL, that Inspector Richter was looking for records relating to the $120,000 payment to Duffus (T1122 to T1123). Peloquin was unable to reach Richter but he did make contact with Duffus (T1123). Duffus told Peloquin that he had made an error in that he had told Richter that a payment to Bannister had been made upon instructions from either Crosby or Peloquin, and that upon a review of his records he realized that statement was not correct (T1123 to T1124). Peloquin immediately called Crosby (T1124). Peloquin returned to Atlantic City and on July 29, 1984, met with Crosby and Murphy to discuss this matter. It was decided at that time that Murphy would go to the Bahamas the following day to obtain the pertinent records (T1125).

Murphy met with Richter on July 30, 1984, and Richter showed him the records of the $120,000 payment from PIL to Duffus, the $105,000 payment from Duffus to Bannister, and the $91,000 payment from Bannister to Cargill (T639). Murphy relayed this information to Peloquin, and then met with the Prime Minister. The purpose of this visit was described as two-fold:

to advise Pindling what Richter had told Murphy and to facilitate locating Duffus, who by that time had left the Bahamas (T1207 to T1209). Murphy and Peloquin later testified to these events before the Commission of Inquiry, and denied any knowledge that the payments were to go beyond Duffus (T1130; D-15). The Commission of Inquiry specifically accepted Peloquin's testimony in this regard as true (D-15 at 112; T1130). Crosby has similarly denied issuing such instructions (T1522).

We find credible the testimony of Crosby, Peloquin and Murphy that the payment to Duffus was made as a legal fee and that they had no knowledge that he would be forwarding any money to Bannister or the Prime Minister. We reject Duffus' statement to Richter about acting upon instructions from Resorts as incredible, just as we reject Duffus' testimony before this Commission as incredible.

Duffus testified before us that his payment to Bannister in the amount of $105,000 was made as an unsecured interest free loan and that he approached Peloquin at Bannister's suggestion (T1968; T2065; T2089). It is now four years later and, according to Duffus, $4,000 has been repaid (T1843 to T1844). There is no documentation to reflect that this payment was in fact a loan. This account of the transaction is clearly incredible.

Duffus admitted telling Richter that he had made the payment to Bannister upon instructions from Resorts, but he claims that he erred when he gave Richter this information. Initially, Duffus testified before us that he gave erroneous

information to Richter because he had forgotten the payment was a personal loan to Bannister (T1852 to T1854). This testimony is totally implausible, and on the second day of his testimony Duffus admitted to this Commission that his initial explanation was untrue. He then offered a second explanation as to why he had given that information to Richter, by saying he was a resident alien in the Bahamas, subject to possible expulsion and loss of property, and that he was attempting to stall Inspector Richter to prevent himself from being summoned to testify before the Commission of Inquiry (T2005 to T2013).

As a result of Duffus' propensity to change his version of the significant events, and the inherent inplausibility of much of what he has said, we cannot afford any weight to his testimony and find that he has demonstrated a total lack of credibility. Duffus may be characterized as an individual caught in a web of deceit trying desperately to extricate himself but only becoming more entangled with each attempt to justify his behavior.

We may never know with certainty Duffus' motives for telling Richter that he acted upon instructions from Resorts. Those motives may well have involved his precarious position in the Bahamas and his desire to deflect attention from himself and thus avoid being summoned before the Commission of Inquiry. However, we are satisfied by Resorts' explanation that it paid the $120,000 as a legal fee and without knowledge that Duffus would forward the money to anyone else. We find the testimony of

Crosby, Murphy and Peloquin in this regard entirely worthy of belief. We are satisfied from the documentation provided by Resorts that substantial legal work had been done and that substantial additional work was anticipated. We are satisfied from the testimony of Messrs. Murphy and Duncombe that the amount of the fee was in keeping with Bahamian practice and custom. We must also note that there is no suggestion, in the evidence or in the proposed findings of fact submitted by the Division, of any motive for Resorts to pay a bribe to Bannister or to the Prime Minister.

In this regard, we find it incongruous to believe that if a devious character like Duffus had been a conduit for a bribe, he would have been so forthright as to admit it so readily to Inspector Richter by informing on Resorts. On the other hand, if he had been operating innocently on the instructions of Resorts, as the Division speculates in its proposed findings, it is unlikely he would have thought it so necessary to flee the country to avoid testifying before the Commission of Inquiry. It also defies credulity to believe that if Resorts had actually instructed an innocent Duffus to make the payment to Bannister that it would have at the same time sought a written request for payment as an advance against legal fees, which certainly would have alerted Duffus that something was amiss.

The Division asserts that Duffus' bookkeeping entries regarding the deposit and disbursement of the $120,000 check support the theory that Resorts intended the money to go to

Bannister. The record reveals that Duffus deposited the check i his firm's client account, as he would with any payment made to the firm, with an appropriate notation in his ledger book crediting PIL for the payment. However, instead of transferring the entire amount to his office fee account, as a $120,000 legal fee, and then distributing $105,000 from the office account to Yasmar, he transferred $105,000 directly from his client account to Yasmar and deposited only $15,000 in his office fee account (T1944 to T1945; T2103 to T2104).

Duffus testified that the "short-circuit" of the funds, in bypassing his office fee account, was merely a bookkeeping error (T1944 to T1945). However, due to the dubious quality of Duffus' testimony and the fact that his actions in making these entries are subject to various interpretations, we cannot make any definitive findings with respect to the bookkeeping evidence We had the opportunity to observe Duffus as he testified and we readily conclude that his account of events is not predicated on the truth but rather on his instinct for self-preservation. Therefore, it is at least conceivable that Duffus purposely transferred the $105,000 directly from Resorts' account to the Yasmar account, without any instruction from Resorts, in order to minimize his role in giving the funds to Bannister. The Division asserts, though, that the entries reveal Duffus was only following Resorts' directions when he passed the funds to Bannister, although the Division theorizes that Duffus was acting innocently. Of course, if the entries were correct and purposeful, they were in contradiction to the fee request letter which Resorts had demanded and obtained from Duffus. Thus, if as the

Division would have us believe, the entries accurately depicted the intended flow of the funds from Resorts to Bannister, then Duffus knew of the alleged scheme and acted in concert with it. However, this belies the Division's premise that Duffus was an innocent pawn in the transaction. As the Division rightly acknowledges, it would be unlikely for Resorts to include Duffus as a knowing participant in such a nefarious undertaking. It would be even more unlikely that a culpable Duffus would calmly inform Inspector Richter of Resorts' instruction to pass the funds through to Bannister. As noted, our observations of Duffus on the stand convince us that his first concern would have been for himself. Of course, if the entries were merely errors, as Duffus testified, then no adverse inference can be drawn since the proper entries would have been consistent with Resorts' account of the episode. In short, the undisputed fact that Resorts contemporaneously demanded and obtained the fee request letter, combined with the obvious prevarications by Duffus, undercut any significance which might otherwise be ascribed to the ledger entries. Once again, the testimony of the Resorts' officials is simply far more direct, clear and persuasive than the assertedly damaging evidence.

Despite this conclusion, we note that Duffus has placed Resorts in a compromising situation which probably could have been avoided if Resorts had adhered to a more rigid procedure for approval of fees. Certainly, rendering payment to Duffus without a properly documented billing, and upon approval of two men,

Peloquin and Murphy, who hold no office or employment with Resorts, is not a preferred practice. However, the evidence in relation to the payment to Duffus does not lead us to draw any adverse inference with regard to the good character, honesty or integrity of Resorts or its officials.

While we can find nothing in the record to intimate any improper activity of Mr. Murphy, we do point out that his testimony concerning the time and manner in which he first learned of the bribery suspicions is at direct variance with the credible testimony of Mr. Peloquin. Surely, Peloquin must have apprised Murphy at their hastily-called July 29, 1984, meeting i Atlantic City of the full extent of his conversation with Duffus Thus, Murphy's account that he did not learn until his meeting with Richter on July 30, 1984, about Duffus having told Richter he had acted upon instructions from Resorts in paying Bannister (T952), does not comport with our understanding of what transpired. While we are troubled by Murphy's apparent lack of recollection of such a significant aspect of this case, we can find no reason why Murphy might want to mislead or deceive us on this point, and we cannot conclude that this discrepancy in testimony adversely impacts upon his character.

THE MAYNARD PAYMENT

The second major transaction involved in this case relates to the sale of the Bridge Company. A $700,000 finder's fee was paid by the Bridge Company to Julian Maynard, of which

$580,000 was passed by Maynard to Bannister. One week later, Bannister paid $339,979.61 to accounts of the Prime Minister (T2440 to T2441). The question again is whether there was knowledge that finder's fees would be disbursed in this fashion. Murphy and Crosby vigorously deny any knowledge that the finder's fee would be shared by Bannister or the Prime Minister (T515; T590; T641; T647; T1505).

At the time of its acquisition of Paradise Island, Resorts, through PIL, entered into an agreement with the Bahamian government, known as the Hotel Encouragement Act Agreement (R-21a), pursuant to which PIL committed to build a 500-room hotel, a 100-room hotel, a casino and a bridge between Nassau and Paradise Island (T517 to T518). Seeking outside financing for its obligations, Resorts obtained loans from the Chase Manhattan Bank and the Bank of Commerce, which required that the bridge be financed independently (T518 to T519).

Accordingly, Mr. Crosby undertook the bridge obligation personally, forming the Bridge Company by investing $650,000 of his own funds (T520; T1437 to T1438). Roy West Banking issued a $1,100,000 mortgage commitment, receiving in return 20 of the 200 shares initially issued by the Bridge Company. Twenty-one shares were given to Gerald Goldsmith, who had arranged the financing with Roy West Banking (T525 to T526). After the construction of the bridge, other investors purchased interests in the Bridge Company. These included Cosmos Bank, a Swiss company, which purchased a 20% interest (T527).

In 1979 Crosby and Murphy determined that it would be advantageous to sell the Bridge Company. At the time of the sale Crosby held about a 75% interest in the Bridge Company, with the remaining interest being held by Roy West Banking, a hospital and a trust of the Bronfman family of Canada (T529 to T531; T588 to 589).

The primary motive for the decision to sell related to a change in the tax law. The 1966 IRS Code contained provisions designed to encourage investments in lesser developed countries, including the Bahamas. Accumulated earnings generated by such investments were given capital gains treatment after ten years (T531). In 1976 the tax law was modified in this respect by requiring future earnings to be taxed as ordinary income (T533). As a result, the Bridge Company declared dividends in August 1979 for all post-1976 earnings, since there was no longer any advantage to retaining earnings in the company (T534). In addition to tax considerations, Crosby wanted to obtain the retained earnings so he could invest them, while the other shareholders were interested in receiving a return on their investment (T765; D-2 at 59).

Pursuant to the plan to sell the bridge, Crosby engaged in negotiations with Abraham Lieber beginning in March 1979, but the transaction never came to fruition due both to Crosby's dissatisfaction with the purchaser's financial viability and the parties' inability to agree to certain terms of the transaction (T536).

Shortly after those negotiations had terminated, in November 1979, Maynard approached Crosby and inquired if the bridge was for sale (T536; T1497). Maynard advised Crosby that he had a client who was interested in purchasing the bridge, although at this initial meeting he did not disclose his client's identity (T1501). Crosby, who had never before met Maynard, indicated that the purchaser would have to be someone of substance (T1497).

Maynard assured Crosby that his client was of satisfactory financial stature to consummate the deal (T1498). Maynard also indicated that he expected to receive a finder's fee for bringing his client and Crosby together (T1499). Crosby stated that he had no problem with paying such a commission provided he received his price, which he calculated at about $5,000,000 plus accumulated earnings in the neighborhood of another $5,000,000 (T1497 to T1500; T1613). Maynard also explained to Crosby that he wanted to represent both the purchaser and the seller in the transaction, to which Crosby consented (T1501). Dual representation with the consent of the parties is an accepted practice in the Bahamas (T1369).

In a subsequent meeting, Maynard identified the purchaser as the Wedge group, a Houston-based organization whose principal is a Lebanese individual named Issam Fares (T1502; T1604). As it turned out, Fares had been involved in an earlier business transaction with Resorts involving the sale of land for the site of the Grand Hotel on Paradise Island (T1502; T1604).

Prior to consummation of the bridge transaction, the purchaser decided to acquire the bridge through a Luxembourg corporation called BDM (T548). Before the sale, Crosby had been given a 25% temporary beneficial interest in BDM, which interest terminated upon consummation of the deal (R-30a; T902). Resorts was unable to satisfactorily explain the purpose of this interest, but we are convinced that it was not given either at Crosby's direction or for any deceitful purpose by Resorts, and that it does not have a substantial bearing on this hearing.

Murphy negotiated the final closing of the bridge deal. The final price was $5,100,000, plus accumulated earnings of about $5,000,000 (R-31a; T542). The total sum paid to Maynard for the bridge transaction by the seller was $880,000, which included a $700,000 finder's fee. The balance was designated by Maynard as a legal fee (R-31g and h; T750 to T751). In addition Maynard received an additional $325,000 in fees from the purchaser (T2302 to T2303).

Maynard testified that Bannister had initiated the idea of putting together a deal involving the purchase of the bridge. According to Maynard, Bannister advised him that he had learned through an Arab client of his in London that a client of Maynard's was interested in purchasing the bridge. Bannister said that he wanted a $1,000,000 finder's fee for this information. Maynard told Bannister that such a fee would be excessive, and eventually the two agreed that Bannister's fee would be $580,000 (T2272 to T2273; T2292 to T2296). Bannister advised Maynard not to reveal Bannister's part in this operation,

for fear that Crosby would not want to pay such a large fee to Bannister, who was already a paid consultant to Resorts. Accordingly, Maynard never advised Crosby of his intention to share the finder's fee (T2306 to T2307). Maynard clearly misled Crosby in this regard.

Although we do not accept as totally plausible Maynard's explanation as to why Bannister deserved to receive such a substantial fee for providing information that may readily have become available through his own client, we do accept as fact, based upon Maynard's and particularly Crosby's and Murphy's testimony, that Crosby and Murphy were unaware that Bannister would share in the fee. At the time of the transaction, there was no reason for Crosby or Murphy to know of the connection between Maynard and Bannister or to suspect that others would receive part of the fee (T590; T1505 to T1507).

We observe that as part of the transaction, Maynard, at the request of both parties, provided his written assurance, pursuant to the Foreign Corrupt Practices Act, 15 U.S.C.A. §78m, 78dd-1, 78dd-2, that none of the money he received from his role in the deal was to be transferred, either directly or indirectly, to officials of the Bahamian government or of any Bahamian political party (R-27 to R-28; T590).

The practice of paying finder's fees is accepted in the Bahamas, and Resorts regularly pays commissions and finder's fees in the Bahamas and elsewhere. Thus, the payment of this fee to Maynard, albeit substantial, was consistent with Resorts' practice.

In our view, the evidence concerning the sale of the Bridge Company, considered as a whole, does not impact negativel on the character and integrity of Mr. Crosby or of Resorts. As was true with respect to the Duffus payment, the issues arising out of the Maynard payment are essentially matters of credibility. In this regard, we find Crosby's and Murphy's assertion that they did not know of Bannister's role in the finder's fee to be credible, and in fact we find no evidence to lead us to a contrary conclusion.

During the hearing we heard considerable testimony regarding the subject of exchange control approval, which the purchaser of the Bridge Company shares sought and received from the Central Bank of the Bahamas (R-30a-d; T553). Although we found some of the testimony concerning this matter to be confusing, it is clear that exchange control was a concern of the purchaser, not of the sellers, and therefore does not significantly impact upon the issues raised at this hearing.

CONCLUSION

The Division has recommended that this Commission find James Crosby and Robert Peloquin unsuitable for qualification. By virtue of their positions, each of these individuals must be found qualified in order for RIH to be eligible to hold a casino license. N.J.S.A. 5:12-85(c) and (d). RIH has the affirmative responsibility to establish by clear and convincing evidence the

good character, honesty and integrity of these two individuals. N.J.S.A. 5:12-84. We have carefully weighed all of the evidence and find that the good character, honesty and integrity of Messrs. Crosby and Peloquin, as well as the other qualifiers, has been satisfactorily demonstrated.

As the parties have acknowledged, the resolution of this case depends largely upon findings regarding the credibility of witnesses. On the basis of the entire record before us, we find Messrs. Crosby, Peloquin, Murphy and Davis to have been candid and credible witnesses. We are convinced that they did not knowingly or intentionally engage in supplying funds to the Prime Minister's benefit. Conversely, we find no reliable evidence to support the notion that Resorts or its officers directed the payments from its Bahamian attorneys to Bannister and the Prime Minister. Further, we are persuaded that Resorts had no cause to suspect that Bannister was a corrupt or unfit individual prior to the Commission of Inquiry's findings in 1984.

As previously noted, the Commission has always taken the view that licensure will be denied based on the commission of a disqualifying offense under section 86, such as the payment of a bribe, only if the whole record indicates by a preponderance of the evidence that the offense was in fact committed. This understanding of the Casino Control Act has been applied in every casino license hearing, as well as in every casino key employee, casino employee and casino service industry license hearing.

This understanding of the Act was also clearly enunciated in th Chairman's instructions to the Commission at the present hearin The parties were given the opportunity to offer objections or exceptions to those instructions, but offered none.

However, the Division appears to be suggesting a different interpretation of the Act. For example, in its summation, the Division urged the Commission to deny licensure "based on Resorts International's failure to satisfy the burden of resolving all doubts in favor of licensure by clear and convincing evidence" (T2677). The Division also suggested that licensure was inappropriate because the denials of wrongdoing offered by Resorts' officials were not supported by "independent corroboration or verification" (T2703), and because there remained "the reasonable inference that substantial monies paid [by] Resorts [to] Jack Duffus and Julian Maynard were intended t be turned over to Everette Bannister" (T2707).

Apparently, it is being suggested Resorts must clearly and convincingly dispel "all doubts" concerning the Duffus and Maynard payments, and that denials of wrongdoing, even if found in the context of the record as a whole to be true, are insufficient.

In this case, as in any case before any tribunal, some doubt is possible. Of course, the standard of proof here is not beyond any doubt, a standard which would be higher than the criminal law standard of "reasonable doubt." Rather, the proper standard for determining good character is clear and convincing

evidence, but for finding one of the disqualifying offenses, here bribery, the elements must appear by a preponderance of the evidence. In any event, we find that the payments from Resorts to Duffus and Maynard were legitimately made, and that Resorts had no knowledge of Bannister's unsuitability until the Commission of Inquiry hearings. Lest there be any misunderstanding of our assessment of the record, we find these facts to be clearly and convincingly established.

We do, however, have serious concerns about the corporate structure, operating procedures, reporting lines and general organization of Resorts and its subsidiary companies. We specifically find the procedures for investigating persons with whom the company becomes involved, and those for approving payments of substantial sums of monies, to be deficient. The evidence presented at the hearing reveals a degree of general corporate laxity and imprudence which, while not so serious as to provide a basis for denying relicensure, is clearly inappropriate for a company operating in this most regulated of all industries. Appropriate safeguards and precautions are necessary to diminish the likelihood of such events reoccurring.

Before addressing the specific conditions that must be imposed upon Resorts, we take note that Resorts itself has recognized that changes are needed. In a recent letter to the Commission, Mr. Crosby has represented that he and his fellow Resorts' executives intend to alter certain practices and

procedures in an effort to prevent the company from again findi itself in these kinds of difficulties.

However, in our view the changes proposed by Mr. Crosby requires further expansion, and we will therefore impose the following conditions, which are designed to restructure corporat reporting lines, to clarify the duties of certain employees, principally Mr. Peloquin, and to ensure greater control of corporate activities:

1. That by no later than the time of its annual stockholder meeting in May 1985, Resorts shall cause at least 5(of the membership of its board of directors to be independent, outside members and shall maintain such minimum proportion thereafter. We note that this requirement was previously impose upon Bally Manufacturing Corporation, see In the Matter of the Application of Bally's Park Place, Inc. For A Casino License, (1980), and in that context we have defined the term "independent, outside director." That same definition shall apply here;

2. Mr. Crosby and Mr. Davis shall resign from the audi committee of Resorts;

3. The audit committee of Resorts shall consist entirely of independent, outside members of the board, as oppose to the present system, under which the outside members of the committee are not members of the board;

4. The audit committee shall report directly to the board of directors and shall have increased responsibilities

designed to enable it to insure compliance with New Jersey and Bahamian gaming regulations;

5. Intertel's relationship with RIH and the parent company shall be reduced to writing. Resorts shall set forth the role which Intertel serves and the activities it will carry out for the parent company and the licensee;

6. Resorts shall sever all dealings with Mr. Duffus and Mr. Maynard;

7. Mr. Murphy shall hereafter be a qualifier and shall promptly submit to the investigation procedures;

8. All consummated Bahamian real estate transactions and expenses accruing therefrom shall be reported to the board of directors and the audit committee on a semi-annual basis;

9. The audit committee shall also report to the Commission and the Division on significant Bahamian matters pertaining to the company;

10. The payment in the Bahamas of business expenses of $50,000 or more shall be reported to the Commission and Division semi-annually together with required documentation in support of such fees pursuant to guidelines and procedures to be adopted by the audit committee;

11. Intertel shall conduct background investigations into non-casino Bahamian employees, lawyers and consultants that receive fees of $50,000 or more annually. Written reports on such investigations shall be available to the Commission and Division;

12. All Bahamian consultants shall be retained under written agreement which specifies the terms, conditions and duties of their consultancy;

13. No scale fees shall be paid in the Bahamas unless accompanied by an itemized bill for professional services which outline the specific subject matter of the scale fee, the calculation of the fee and the period of time that the fee encompasses;

14. Resorts shall adopt a policy prohibiting retention of any attorney representing both Resorts and another person or entity in the same transaction;

15. The company shall establish procedures that will assure that adequate and appropriate records are maintained to provide an audit trail for certain non-financial transactions. Such proceaures will include the following:

a. Intertel shall maintain a file documenting all requests for investigations from Resorts and the results of such reports together with transmittals to Resorts. Such files shall be available to the audit commitee upon its request.

b. The Commission and Division shall be informed, in writing, of formal appearances of company officials before official governmental bodies in the Bahamas where the subject of the inquiry may affect Resorts reputation as to regulatory compliance.

c. Each key employee, lawyer, broker or consultant in the Bahamas shall be required to submit on an annual basis a certificate attesting to compliance with the Foreign Corrupt Practices Act.

d. United States lawyers and consultants doing significant business on behalf of Resorts shall be required to submit a certification attesting to compliance with the provisions of the New Jersey Casino Control Act regarding political contributions.

In light of all the foregoing facts and conclusions, the Commission is satisfied that RIH has established by clear and convincing evidence its qualifications. Accordingly, RIH's casino license is renewed subject to the conditions set forth herein and contained in the license resolution.

NEW JERSEY CASINO CONTROL COMMISSION

E. Kenneth Burdge, Vice-Chairman

Carl Zeitz, Commissioner

Joel R. Jacobson, Commissioner

DATED: April 22, 1985

SEPARATE OPINION OF CHAIRMAN READ

As the majority observes, an applicant for the issuance or renewal of a casino license must establish by clear and convincing evidence its good character, honesty and integrity, as well as its financial stability, integrity and responsibility.

Since the original RIH license opinion in 1979, the financial stability, integrity and responsibility standard encompasses all financial aspects of an applicant, its holding companies and its individual qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it addresses the care and prudence exercised by an entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual.

The Act also demands that license applicants and their qualifiers provide all information, documentation and assurances required by the Act or requested by the Commission, and reveal all facts material to qualification of licensure. N.J.S.A. 5:12-86(b).

When I evaluate the record in this case in light of the strict standards that I have just outlined, I find myself unable to conclude that RIH has established its fitness for relicensure by clear and convincing evidence, and I must, therefore, respectfully dissent.

First, I must comment about the man who stands at the center of this case, Everette Bannister. Resorts' relationship with Bannister can at the very least be described as troublesome. The record clearly demonstrates his unsuitable character. Bannister impresses me as being a most resourceful individual: flamboyant, conniving, manipulative and calculating; a true wheeler-dealer in the most negative sense of that term. The Commission of Inquiry revealed that he had been involved for a prolonged period in a variety of unsavory activities, including taking bribes from known drug smugglers (D-15). Even those who viewed Bannister in a favorable light have referred to him as controversial. In light of Bannister's well deserved reputation, I am deeply concerned by the fact that Resorts did not exercise greater discretion and control over a situation which, allowed to escalate, eventually became a source of such great embarrassment and consternation to the company that it belatedly recognized the need to cut all ties to Bannister.

In this regard, I find the absence of written documentation of Resorts' agreement with Bannister to be significant. At a minimum, Resorts should have required a written agreement specifying Bannister's responsibilities and confirming their consultancy arrangement, in order to avoid the appearance of impropriety. In my judgment, it is not at all surprising that, given free rein by Resorts, Bannister would prove so great a detriment to the company.

Resorts also should have recognized the necessity to

conduct a thorough investigation of this individual before entrusting him with significant responsibilities. In light of some of the information that became known to Resorts, I simply do not understand why it would exhibit such a persistent pattern of neglect. At the outset of Resorts' relationship with Bannister, during the course of the IAB negotiations, Bannister attempted to persuade IAB to increase his share of the transaction (D-34, D-35). Resorts was not alarmed by Bannister's behavior, and despite the expensive failure of the airline deal, promptly elevated Bannister to the role of consultant.

I am not persuaded that Bannister's role was as innocent as Resorts attempted to portray. We are told that Bannister was employed as a consultant for $50,000 per year to advise Resorts on the attitudes of the Pindling government and to serve as Resorts' voice to the government, yet the record is totally bare as to what consulting services were actually performed that benefitted Resorts (T393). On the contrary, the record is replete with references to inaccurate information provided by Bannister, concerning such matters as governmental approval of the proposed Holiday Inn purchase, the government authorization of the Grand Bahama expansion, and the renewal of IAB's license (T323).

We are further advised that Bannister was in a position to bring Resorts certain business propositions. But what propositions! All of Bannister's business dealings with Resorts, including Las Palmas, Unilever and BWA 1974, were very

unprofitable at least to Resorts. I also cannot overlook the fact that Resorts entered into a joint venture with Bannister in the BWA 1974 airline without any apparent concern for the fact that Bannister's predecessor airline, BWA, had failed financially, and had defaulted on loans from the Bahamas Commonwealth Bank totaling $11,000,000 (T168 to T172).

In light of the inaccuracy of information provided by Bannister and the poor quality of his business dealings, it is evident why the Lightbourn Committee did not understand the nature of Bannister's position with Resorts, and why Mr. Crosby himself admits his difficulty in explaining their arrangement. I too am unable to ascertain Bannister's true position with the company.

The evidence suggests Resorts purposely chose to ignore any unfavorable or uncomplimentary information it received concerning Bannister. For example, Resorts, through Mr. Peloquin, paid absolutely no attention to repeated warnings by Perry Christie, then Chairman of the Bahamian Gaming Board, to disassociate itself from Bannister. In view of Mr. Christie's esteemed status and position, his objections to Bannister were entitled to greater weight than if made by another. In addition, David Probinsky, a Resorts consultant, admonished Resorts concerning the continued use of Bannister, to no effect.

It also became apparent during this hearing that Bannister associated with persons known to Resorts to be

disreputable. I find it difficult to accept Mr. Peloquin's explanation that his investigation regarding Victor Sayyah did not disclose a relationship with Sorkis Webbe, or Bannister's participation in Sayyah's attempt to buy the El Casino. Moreover, the Lightbourn Committee hearings concerning charges that Bannister exercised coercive measures to effectuate business deals should not have been dismissed as lightly as they were.

In light of all of the factors that I have mentioned, Resorts' conduct in retaining Bannister as a consultant for 10 years, with no background investigation, no written contract, and no clear reporting lines, evidences a serious deficiency in business ability and probity.

I now turn to the two financial transactions. I concur with the majority that Inspector Richter's testimony was totally credible in all respects. I disagree, however, with the majority's conclusion regarding the discrepancy in testimony by Mr. Peloquin and Mr. Murphy concerning the manner in which the latter learned about the bribery suspicions. Murphy testified that he did not learn about the instruction aspect of Duffus' story until Monday, July 30, when he met with Richter in the Bahamas. Peloquin, Crosby and Murphy sat down to review the matter on Sunday, July 29. Yet, according to Murphy, at the conference Peloquin did not reveal that most critical aspect of the entire incident. On the other hand, if Peloquin did tell Murphy of Richter's report that Sunday, then Murphy's version

is suspect. There is an obvious contradiction here with respect to a significant aspect of Resorts' version of what transpired. They cannot have it both ways. I conclude, therefore, that one of these individuals did not tell the truth about this episode.

Charles Murphy was actively involved in the negotiations to sell the bridge. I have a great deal of respect for Mr. Murphy's abilities as an attorney in his representation of Crosby's and Resorts' interests. For this reason, I cannot understand why Mr. Murphy was not properly concerned about and could not satisfactorily explain the 25% interest Mr. Crosby acquired in BDM prior to the consummation of the bridge deal. Nor can I understand why in seeking to get an explanation from the European attorneys for this situation, he apparently made one slight, direct effort and then returned to the services of Mr. Maynard who had already contributed to Resorts' substantial problems. My impression is that Mr. Murphy was less than forthright concerning this and other aspects of the bridge deal, as well as certain aspects of the exchange control issue.

In addition, Mr. Murphy's explanation as to why he approved the advance payment to Duffus does not persuade me. Although I can accept the majority's finding that Duffus had actually performed a considerable amount of work for which he had not been compensated, this does not entirely explain the approval of what was clearly characterized by Duffus as an advance payment. Duffus had not submitted a bill for past

services, nor did he indicate the $120,000 was partially for previous work, yet Mr. Murphy somehow drew the nexus between services rendered and services to be rendered and approved probably the largest single fee to Duffus in their extended relationship. It seems too contrived to explain a payment in advance of work to be performed by linking it with money already earned.

I have heard considerable testimony attempting to justify the payment of the substantial finder's fee to Maynard. Quite frankly, I do not believe that Messrs. Crosby and Murphy meekly accepted a $700,000 fee as being appropriate under these circumstances, especially when the actual sale price was $5,100,000 plus accumulated earnings. While they may or may not have authorized the payment to Maynard as part of a bribe, nonetheless, they should have been more cognizant of the fact that this fee was excessive, and out of line with other fees. I note that no investigation was conducted concerning Maynard, a man unknown to Mr. Crosby prior to this episode, nor did Mr. Crosby attempt to discover the purchaser's identity before agreeing to the finder's fee. Clearly, the payment of this money without a better understanding of the total circumstances reflects negatively upon Mr. Crosby's business acumen and probity, although I do find his testimony completely credible.

I have attempted to outline some of the significant gaps and inconsistencies which I perceive in Resorts' version of the

Bannister consultancy arrangement, the Duffus fee payment and the bridge transaction. I have also tried to make clear why I find Resorts' explanations of these matters unsatisfactory, why I consider some of Resorts' witnesses, especially Mr. Peloquin and Mr. Murphy, to have been less than candid, and why I have substantial doubts about the business practices and abilities of the company and its executives.

I am particulary troubled by what I perceive to be a lack of business prudence and financial responsibility. Through their willingness to pay an unusually large legal fee on the same day that it was requested and with practically no documentation, as well as their immediate acceptance of a demand for an exorbitant finders' fee, Resorts' top officials facilitiated highly questionable payments to Bannister and ultimately to the Prime Minister. In this regard, I find it difficult to accept the notion that it was merely a coincidence that <u>two</u> such payments were channeled to the Prime Minister in this fashion. Although I was troubled that no <u>quid pro quo</u> was established for bribery in this case, I find that to be symptomatic of Resorts' entire relationshp with Bannister since the record reveals throughout that Resorts did not obtain true value for its money.

In his recent letter to the Commission, Mr. Crosby states that Resorts has suffered tremendously from the events which transpired in the Bahamas. I would suggest that he has only himself and his fellow Resorts' officials to blame. If sound corporate practices and procedures had been in place, and

had been followed, the company's difficulties in the Bahamas might well have been avoided. Through their willingness to allow Bannister to represent the company and carry its name, these same officials invited the embarrassment which ultimately befell them. I would further point out that not only Bannister but also Duffus and Maynard were employed by Resorts at the times which gave rise to their questionable conduct that has been called to our attention.

For the foregoing reasons, I must find that RIH has not persuaded me by clear and convincing evidence that it should continue to enjoy the privilege of holding a casino license in this State. However, in view of the majority's decision to the contrary, I would join in imposing the conditions upon the renewal of RIH's license.

Walter N. Read, Chairman

DATED: April 22, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-85
OAL DOCKET NO. CCC 5048-84
APPLICATION NO. 49206-21

APPLICATION OF RICHARD ROMANISHIN
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 20, 1985,

IT IS on this 23rd day of May 1985, ORDERED that the initial decision in this matter is modified as follows:

> The Commission rejects that portion of the initial decision which states that rehabilitation under section 90(h) of the Act must be demonstrated by a preponderance of the credible evidence in the record. As with all affirmative criteria under the statute, rehabilitation must be demonstrated by the applicant by clear and convincing evidence.

IT IS FURTHER ORDERED that the application of Richard Romanishin for a casino employee license is denied substantially for the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Richard Romanishin is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Richard Romanishin, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casino hotels within 10 days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5048-84

AGENCY DKT. NO. 84-EA-85

RICHARD ROMANISHIN,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Richard Romanishin, pro se

Joanne Cocchiola, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: December 19, 1984 Decided: February 1, 1985

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In September 1983, petitioner applied for a casino employee license permitting him to work as an electronic data processor. By letter dated May 4, 1984, the Division of Gaming Enforcement (Division) objected to petitioner's licensure alleging that he had been convicted of a statutory disqualifying offense, and further, the nature of the other offenses for which petitioner had been arrested and/or convicted, demonstrates that he lacks the good character, honesty and integrity required for licensure by the Casino Control Act.

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A prehearing conference resulted in the entry of a prehearing order on August 24, 1984, which defined the following issues to be addressed at the hearing:

1. Is petitioner disqualified from licensure due to an alleged conviction of unlawful distribution of marijuana (a violation of N.J.S.A. 24:21-19a(1)), pursuant to N.J.S.A. 5:12-86c(3)? If petitioner has been convicted of a statutory disqualifying offense, can he demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90h?

2. Based upon the allegations set forth in the Division's May 4, 1984 letter with regard to petitioner's arrest and conviction record, can petitioner demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) as incorporated into N.J.S.A. 5:12-90b?

A hearing was held on October 26, 1984, at the Cumberland County Courthouse, Bridgeton, New Jersey. The record closed on December 19, 1984, upon receipt of an exhibit in the Division's possession which was introduced at the hearing as part of petitioner's proofs (P-7).

FACTUAL FINDINGS

I find the following relevant facts:

Petitioner, age 32 years, completed a Personal History Disclosure Form-2A on September 29, 1983, seeking a casino employee license permitting him to work as an electronic data processor (R-11). He is a 1970 graduate of Millville Senior High School, possesses an expired New Jersey real estate salesperson's license, and has attended Cumberland County College where he obtained his associate's degree in data processing in 1974. He attended Stockton State College from July 1974 until March 1975, where he took several courses in the science and math departments (R-11). He also attended school at the Casino Training Center in Atlantic City, New Jersey, in April 1983 for training as a slot booth cashier.

Petitioner has had the following employment history:

1. October 1971-December 1973. Employed as the lead computer operator for Airwork Service Division, Municipal Airport, Millville, New Jersey (R-11).

2. January 1974-December 1974. Employed as Junior Computer Operator for Spencer Gifts, Inc., Atlantic City, New Jersey (R-11).

3. January 1975-October 1976. Unemployed (R-11).

4. October 1976-May 1977. Employed as a floorperson (sweeping and waxing floors) for Crothall Hospital Services, Inc. at Burdette Tomlin Hospital, Cape May Court House, New Jersey (R-11).

5. May 1977-October 1977. Employed as a Water Meter Reader for the State of New Jersey in Cape May, New Jersey.

6. October 1977-February 1983. Employed as a computer operator supervisor, supervising four operators at National Freight, Inc., in Vineland, New Jersey. Petitioner left this employment due to a ". . . drinking problem and disagreement with company policies" (R-11).

7. After leaving his employment at National Freight, petitioner was employed for approximately two days at Mr. Big Car Wash, two months at the Shore Mall in Pleasantville, New Jersey, and one week at Trump Plaza as a slot booth cashier. Petitioner has been unemployed at all other times since February 1983.

Petitioner's arrest and conviction record consists of the following:

1. On July 29, 1972, petitioner was charged in the City of Millville with violations of the following:

   A. N.J.S.A. 2A:170-6 (assault and battery), 2A:170-29 (offensive language), 2A:170-29 (molesting and interfering), 2A:170-60

(throwing objects at vehicles), and 2A:170-36 (malicious injury to property). Petitioner pled not guilty to all charges, was found not guilty of all charges with the exception of malicious injury to property for which he was found guilty on August 7, 1972 (R-2).

2. On December 26, 1972, petitioner was arrested by the Hamilton Township Police Department and charged with foul and abusive language (a violation of N.J.S.A. 2A:170-29). The Division was unable to obtain the police reports for this incident, but petitioner admitted at the hearing that he was involved in an accident as a result of drinking, and he made foul and abusive remarks to a policeman. He pled guilty to the charges and was fined $15 (R-3).

3. On November 14, 1975, petitioner was indicted for (a) resisting arrest on August 7, 1985, in violation of N.J.S.A. 2A:85-1, and (b) unlawful distribution of a controlled dangerous substance (marijuana) on August 7, 1985, in violation of N.J.S.A. 24:21-19a(1) (R-4). On November 14, 1975, petitioner entered guilty pleas to both charges and was sentenced on November 16, 1975,[1] to ". . . the New Jersey Reformatory and delivered directly to the Youth Reception and Correction Center, Yardville, for an indeterminate term - suspended. $1,000 fine and 2 years probation concurrent." Petitioner received credit for seven days served prior to sentencing and the Judgment of Conviction advised "Because of your prior record at your age of 23 years and because of your involvement with drugs and alcohol you stand before this Court again convicted of violation of the criminal law. Because it is necessary that you be punished for these offenses but that some effort must be made to bring about your rehabilitation and to deter you as well as others" (R-5). On March 11, 1977, an order was entered terminating petitioner's probation (the original term of probation was to have ended on January 16, 1978) because petitioner reported as required and paid his $1,000 fine. The termination order indicated that petitioner had shown improvement (R-5).

[1]In reviewing exhibit R-5, I note that the judgment of conviction bears the date 11-16-76. However, the judgment of conviction was filed with the Cape May County Clerk on January 28, 1976. I have therefore assumed that the conviction date was a typographical error and should be 11-16-75. This would be consistent with petitioner's testimony and would correspond to the term of probation.

4. On October 10, 1975, petitioner was arrested by the Millville Police Department and charged with three counts of being drunk and disorderly in violation of N.J.S.A. 2A:170-26. He was found guilty on all three counts, sentenced to 30 days in jail, and fined $25 for each count (R-6).

5. On June 1, 1976, petitioner was charged by the Cape May County Police Department with setting off a false fire alarm (no statutory cite was provided). On June 23, 1976, he was found guilty and fined $200 plus costs (R-7).

6. On February 16, 1983, petitioner was arrested by the New Jersey State Police in Buena Vista Township and charged with violations of N.J.S.A. 2C:18-3(b)(1) (criminal trespassing) and 39:4-50 (driving while under the influence of alcohol). At the time of the arrest, petitioner stated he was Robert Romanishin (petitioner's identical twin brother) resulting in the arrest and investigation reports being prepared under that name (R-9). (Petitioner anticipates that this misrepresentation may present an obstacle to the renewal of his real estate license.) On March 7, 1983, an additional complaint was filed in Buena Vista Township Municipal Court charging petitioner with hindering ". . . the apprehention (sic) of himself, namely, Richard Romanishin, by means of deception in that he represented himself as another, to wit; Robert Romanishin . . ." in violation of N.J.S.A. 2C:29-3(e) (R-9). On March 7, 1983, a revised complaint for criminal trespassing was prepared, utilizing petitioner's own name (R-9). On April 27, 1983 petitioner pled guilty to the charges of criminal trespass and hindering apprehension and was fined $180 (R-8).

In addition to the above arrest and conviction record which is supported by arrest and investigation reports introduced into evidence, as well as copies of judgments of conviction, petitioner admits that the February 1983 drunk driving charges resulted in a guilty plea to reckless driving. His driving privileges were suspended for 30 days. Additionally, he admits to being charged with the following motor vehicle violations (R-11):

1. Refusal to submit to a breathalyzer test - charges dismissed in March 1983.

2. Careless driving - found guilty in December 1979.

3. Driving while under the influence - found guilty in December 1979 resulting in a fine and loss of driving privileges.

Additionally, petitioner was charged with various offenses in the state of Florida during 1977, the specific nature of the charges not being disclosed, due to the apparent unavailability of the court records. However, at the hearing, petitioner gave the following credible accounting of the Florida incident: He was sitting on the beach on one of the Florida Keys in a rented car, with a bottle of rum and a bottle of Coke. He drank too much, resulting in intoxication to such a degree that he could not of his own recollection remember the incidents which occurred thereafter. The details of the incident to which he testified at this hearing were the facts as presented to him by the public defender who represented him at the Florida court proceedings. Apparently, petitioner left the beach and the next thing he remembered was waking up in what he referred to as "City Hall," handcuffed and soaking wet. He had driven at a high rate of speed attempting to catch a plane in Miami and while driving over a bridge on Marathon Key, a police car stopped in front of him. Petitioner ran his automobile into the back of the police car. The police car behind him ran into the back of petitioner's rented car. Petitioner got out of the car, jumped off the bridge, and was ultimately rescued by the police who came after him in a boat. During the rescue, petitioner attempted to refuse to get into the boat. Petitioner, through his public defender, entered into a plea bargaining process which resulted in petitioner agreeing to serve 30 days in jail in Key West, Florida. The matter had originally been listed for a jury trial to commence July 13, 1977 (R-10).

During the hearing, petitioner testified openly and credibly as to the details surrounding his various arrests and convictions. He stated that the July 28, 1972 incident occurred when he became involved in an altercation involving one Jerry Green wherein he and Mr. Green were driving separate automobiles and came close to colliding with each other when Mr. Green allegedly interfered with petitioner's right of way. Petitioner and Mr. Green shouted obscenities at each other, and an incident occurred wherein petitioner stated Mr. Green passed his automobile and repeatedly slammed the brakes (this occurred while petitioner permitted his passenger to drive his automobile). Petitioner ultimately resumed driving the automobile stating "I pulled over—my buddy pulled over, so I could get back behind the wheel. Jerry Green pulled over and waited for us. I come up to

Bridgeton intersection and I stayed to the left, to let him assume I was making a left at the bend, when, in fact, after he went by the median, I quick made a right. I figured well, he was probably going to go up around the corner and come back. I pulled in this lot and picked up a rock. He came back and I threw it at him."

Petitioner admits that he was arrested on December 26, 1972, as a result of an accident due to drinking, and that he made ". . . foul, abusive remarks to the policeman (the Division's May 4, 1984 letter contains a typographical error for this incident, referring to the incident as occurring in 1982, rather than 1972) (R-12). Petitioner stated that he was a minor at the time of this accident, and that after the accident he and the other person involved in the accident had everything under control and were attempting to settle the matter. However, a police officer came by and observed petitioner "stash" a bottle underneath an oil tank and attempted to arrest him. Petitioner used profanity toward the police officer and was charged with careless driving.

With regard to the August 17, 1975 arrest for assault and battery on a police officer, petitioner stated that he and a friend had been at a bar. His friend urinated in public, and a police officer attempted to arrest the friend. Petitioner proceeded to tell the police officer that he could not arrest his friend, and the officer tried to arrest petitioner. When questioned on cross-examination as to whether petitioner struck the police officer in any way, he said "I might have swung at him."

At the time of the August 1975 arrest on drug charges, petitioner admitted that he occasionally used marijuana. He admits that he sold approximately 50 grams of marijuana to an undercover police officer (obviously not aware that he was selling the drug to a police officer), stating "I told him the bags were about 24, 25 grams a piece, really clean and they figured they needed over 25, so they asked me for two bags, so they could grab me for a felony." Petitioner claims he was set up by an acquaintance, who due to his own criminal problems was pressured by the Cape May Police Department to reveal the names of drug dealers. Petitioner denies that he was a drug dealer, stating that the marijuana was intended for his own occasional use, and implied that the undercover police officer was the only person to whom he sold the marijuana.

Petitioner alleges the June 1, 1976 arrest occurred when he was in a bar drinking and a young woman came up to him and accused him of stealing some bicentennial flags. When the young woman became verbally abusive, he told her to leave

him alone. The woman's boyfriend came up to petitioner and began to threaten him, whereupon petitioner walked out of the bar with a mug. When petitioner perceived that the boyfriend was going to beat him up, he smashed the fire alarm with his mug in order to create a distraction, thus permitting him to escape from the bar unharmed.

With regard to the October 16, 1975 arrest for assaulting three police officers, petitioner stated he was "really drunk at the time" although he didn't believe that he ". . . ever really connected with any of them."

Petitioner admits that the March 1983 arrest in Hamilton Township resulted after he had been "drinking all day." He fully admits that he utilized his identical twin brother's name when the police asked him to identify himself. Very shortly after that incident, petitioner signed himself into the Seabrook House for alcohol counseling. Petitioner had a dispute with his employer, National Freight, and after being fired from his job, effective the Friday after the March 1983 arrest, petitioner stated "I went in Seabrook House Saturday. It is not exactly what my attorney wanted. My attorney wanted me to stay out of Seabrook House, to go in later; but I figured since National Freight wanted to cheat me out of my vacation, I'm going to go over there and take a vacation for a month on them. That was like $4,000 to go there" (paid through National Freight's disability insurance). Petitioner stated that after he left the Seabrook House, "I did quit drinking for awhile, but I drink a little bit now and then. I know my limit. It's pretty much under control." Petitioner was pleased to enroll in the Seabrook House program so that he would have time to relax from all of his pressures at work. He admits that he had a serious drinking problem at the time he enrolled in the program.

When questioned as to what evidence he could provide that his drinking problem was under control, petitioner stated "Well, I don't drink every day, like I used to. Sometimes I drink every day, a week straight, maybe a month, whatever, but I don't crave it. I don't crave alcohol. I don't drive anymore if I have been drinking. I lost my license one time for that. Next time, it would be too long to lose it for."

Petitioner's treatment for his alcohol problem has consisted of his one month stay at Seabrook House, attendance at a few Alcoholics Anonymous meetings after he left the Seabrook House, and three out-patient treatment sessions at the Seabrook House after his release. During his enrollment at the Seabrook House, petitioner underwent a

two-day detoxification period. During his stay at the Seabrook House he participated in group therapy and work therapy. Petitioner also apparently consulted with a psychiatrist concerning his drinking problem for an undisclosed number of sessions while he was employed at National Freight during 1981 or 1982 (Prior to his termination from his job).

David Chippendale has been employed as a detective for the Division of Gaming Enforcement for approximately two and one-half years and was assigned to investigate petitioner's license application. On March 22, 1984, he conducted a telephonic interview with petitioner. During the interview, petitioner told Detective Chippendale that all of his arrests were a direct result of his alcohol consumption, and stated that he was now a "moderate drinker."

Petitioner introduced into evidence seven letters in support of his application for licensure. The weight to be given to each of those letters shall be addressed in the Discussion and Conclusions of Law set forth below, however, petitioner did testify as to his acquaintance with each of the letter writers as follows:

1. Joseph Turner is a friend who petitioner knows from school, and who was the passenger in petitioner's automobile during the July 28, 1972 incident (P-1).

2. Harry M. Shallcross is the Director of Intermediate Care at the Seabrook House (P-2).

3. Steven M. Stolar is a counsellor at Cumberland County College. Petitioner's father and Mr. Stolar's father were friends (P-3).

4. Nicholas S. Vecchione had been petitioner's supervisor at National Freight. Petitioner ultimately assumed Mr. Vecchione's position at National Freight, after Mr. Vecchione commenced other employment (P-4).

5. Mark F. Stullenburger has been a close personal friend of petitioner for a substantial but undefined number of years (P-5).

6. Petitioner has known Charles Maines for approximately 27 years and is godfather to Mr. Maines' son (P-6).

7. Philip Marzullo is a vice-president of National Freight. Mr. Marzullo's letter was written after petitioner was terminated from his employment with National Freight (P-7).

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner does not dispute that he pled guilty to unlawful distribution of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-19a(1) on November 14, 1975. The Casino Control Act (Act) in section 5:12-86c(3) lists as a statutory disqualifying offense any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19). Petitioner's conviction clearly is a statutory disqualifying offense, requiring him to demonstrate his rehabilitation as a prerequisite to licensure, pursuant to N.J.S.A. 5:12-90h. Additionally, petitioner is required to demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) as incorporated into N.J.S.A. 5:12-90b, in light of not only his conviction of statutory disqualifying offense but also with regard to his other arrests and convictions.

Frequently, the factors to be considered with regard to rehabilitation and the issue of an applicant's reputation for good character, honesty and integrity are similar, however, it should be noted that the burden of proof with regard to rehabilitation is a lesser burden of proof, i.e., by the preponderance of the evidence. In the present case, I shall first consider whether petitioner has demonstrated his reputation for good character, honesty and integrity by clear and convincing evidence, noting that some of this discussion shall clearly relate to the issue of rehabilitation.

One of the striking aspects of petitioner's case, is his lengthy arrest and conviction record presented. Petitioner experienced a variety of criminal problems during an 11 year period. While two of his arrests occurred more than 10 years ago, those arrests cannot be totally ignored when assessing his good character, honesty and integrity, for the earlier arrests are part of a pattern which developed in petitioner's life. Particularly disturbing, is that several of the arrests involved petitioner's abusive behavior toward law enforcement officers, an offense which I consider to be significant with regard

to evaluating an applicant's qualifications for licensure, since the casino industry is highly regulated and requires respect and cooperation with law enforcement agencies in order to maintain its integrity and the public confidence and trust in the regulatory process. The nature of the crimes for which petitioner was arrested and ultimately convicted essentially involved aggressive, hostile and antisocial behavior. While there was no expert testimony presented in this matter which would warrant a finding that petitioner is an alcoholic, and I do not specifically find that petitioner is an alcoholic, I do **CONCLUDE** that petitioner's arrests and convictions appear to be directly related to his admitted drinking problem. Suffice it to say that the nature and length of petitioner's arrest and conviction record in and of itself tarnishes his reputation for good character, honesty and integrity. The question then arises as to whether the evidence presented by petitioner is sufficient to demonstrate that notwithstanding his arrest and conviction record he possesses the requisite reputation for good character, honesty and integrity.

Clearly favorable to petitioner, was his open acknowledgement of a serious drinking problem, which he now claims is under control, although, I must note that I am disturbed by the fact that petitioner admits that he still drinks (sometimes every day for as long as a month at a time). I did not find anything in petitioner's testimony to convince me that he possesses the requisite reputation for good character, honesty and integrity. I take note of the fact that there was no evidence presented that petitioner has had any arrests or convictions since 1983. However, an examination of his entire arrest record reveals that there were prior periods during which petitioner was not charged with criminal activity for several years, yet, he would thereafter engage in behavior which resulted in subsequent arrests and convictions. There appears to be a propensity for criminal behavior related to petitioner's drinking problem and so long as petitioner continues to indulge in alcoholic beverages, one must seriously question whether he will again engage in aggressive and hostile behavior leading to additional criminal activities.

Consequently, in order to afford petitioner every opportunity to demonstrate his reputation for good character, honesty and integrity, I have carefully examined the seven letters which petitioner introduced into evidence. With regard to the letter from Joseph Turner dated June 1, 1984, which gives Mr. Turner's explanation of the July 28, 1972 incident, that letter merely confirms the fact that an incident between petitioner and Mr. Green did occur, in which petitioner exchanged verbal abuse with Mr. Green (P-1). While the letter denies that any property damage resulted from the incident,

petitioner's conviction speaks for itself. (Petitioner claims that his conviction resulted from a guilty plea, not through trial. I find that distinction to be insignificant.) I **CONCLUDE** that this letter does nothing to enhance petitioner's reputation for good character, honesty and integrity, although, I do not attribute any negative significance to it, but rather, merely view it as corroborative of the fact that the July 28, 1972 incident did occur.

Likewise, the letter from Dr. Shallcross does not really assist petitioner in meeting his burden of proof with regard to his reputation for good character, honesty and integrity (P-2). The letter merely verifies that petitioner did participate in the Seabrook House program, however, the letter offers no evidence as to whether petitioner's participation in the program was meaningful, beneficial, or successful. I also note that I am not particularly impressed with petitioner's initial motivation in entering the Seabrook House, i.e., to "take a vacation for a month on them."

The letter from Steven M. Stolar (P-3) reveals a good relationship between Mr. Stolar and petitioner. However, it is difficult to accord this letter much weight without knowing how much Mr. Stolar knows about petitioner's arrest and conviction record as well as his drinking problem. While Mr. Stolar finds petitioner to be ". . . intellectually competent, creative and humorous . . ." the letter does not reconcile those good qualities with the lenghty history of aggressive, antisocial behavior.

I evaluate the letter from Mark F. Stullenberger (P-5) with some skepticism, particularly since Mr. Stullenberger stated that subsequent to petitioner's in-residence program at the Seabrook House, ". . . to my knowledge [he] has not indulged in drugs or alcohol since the completion of his rehabilitation." That very sentence contradicts petitioner's own testimony wherein he admits that he has continued to indulge in alcoholic beverages. Mr. Stullenburger notes that petitioner's criminal history was substantially influenced by his alcohol and drug use and that ". . . his criminal record contains charges related to spontaneous incidents caused by the alcohol and drugs he consumed." Those statements confirm my own conclusions concerning petitioner's propensity for criminal and destructive behavior as a result of indulging in alcohol.

The letter from Charles Maines (P-6) makes no reference to petitioner's criminal record, and it is difficult to ascribe substantial weight to the letter without the

opportunity to determine how much of petitioner's criminal background is known to Mr. Maines.

I consider the endorsements of Mr. Marzullo (P-7) and Mr. Vecchione (P-4) with regard to petitioner's job performance to be favorable to petitioner, however, I note that with regard to all of the letters submitted, it is difficult to assess much weight to any of them without the opportunity to observe these persons and to hear them testify and to ascertain precisely how much they know about petitioner's criminal background and to what extent knowledge of his entire arrest and conviction record would impact upon their recommendations of petitioner for casino employment. These letters are not corroborative of testimony of other live witnesses who appeared at the hearing to attest to petitioner's reputation for good character, honesty and integrity, since petitioner was the only person who testified on his own behalf.

For all of the foregoing, I **CONCLUDE** that petitioner has failed to meet his burden of proof by clear and convincing evidence that he possesses the requisite reputation for good character, honesty and integrity required for licensure. The letters are simply insufficient to overcome petitioner's lengthy arrest and conviction record.

Having concluded that petitioner was convicted of a statutory disqualifying offense, petitioner must demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90h which requires the following factors to be considered:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the applicant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or

vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who have or have had the applicant under their supervision.

Since petitioner's termination from National Freight, he has attempted to obtain employment. At the end of February 1984, petitioner and his brother bought a home, however, his brother has removed petitioner's name from the deed to the property since petitioner did not contribute any funds to the purchase of the property, and has not been contributing any funds to the upkeep of the property. Petitioner stated that he has been supported by his brother since the purchase of the property, although, he stated at the hearing that he did not anticipate being supported by his brother for much longer.

There is no question but that a conviction for unlawful distribution of a controlled dangerous substance is a serious offense. Petitioner's own testimony as to the circumstances surrounding the offense, do not in any way mitigate against the seriousness of his conduct. The fact that petitioner might have been "set up" by an acquaintance is insignificant. What is significant was his apparent readiness to sell the marijuana to the undercover police officer. Petitioner was approximately 23 years old at the time of the offense, i.e., youthful, but not a juvenile. While the offense occurred approximately nine and one-half years ago, and while there was no further evidence of petitioner engaging in the sale of controlled dangerous substances, I do not view this conviction as an isolated incident, insofar as petitioner had previously engaged in criminal behavior, and continued to engage in criminal behavior after his 1975 conviction. The early termination of his probation does not go unnoticed. However, petitioner continued to thereafter engage in additional behavior which resulted in subsequent arrests and convictions. With regard to any social conditions which may have contributed to the offense, petitioner clearly had an alcohol problem and admitted to the use of marijuana. Assuming, arguendo, that his drug and alcohol use might have contributed to the sale of the marijuana to the undercover police officer, I cannot conclude that his alcohol dependency and drug use excuses his behavior in any way. I make this conclusion by considering his post-1975 conviction behavior, insofar as petitioner had the opportunity to mend his ways, yet he failed to do so. I note the absence of any evidence of arrests or convictions after April 1983, however, in considering whether or not an applicant has been rehabilitated, the mere absence of criminal or antisocial behavior does not in and of itself necessarily warrant a finding of rehabilitation. An examination must be made of what positive action an

applicant has taken to improve himself and to correct any underlying problem or condition which might have contributed to the statutory disqualifying offense. I note that not only was petitioner convicted of additional offenses subsequent to his 1975 drug conviction, but further, he was terminated from his employment with National Freight, and subsequent to that termination, has failed to maintain steady employment. At the age of 32 years, he is dependent upon his brother for shelter and support. I find those factors to be significant in considering whether or not he has been rehabilitated. Additionally, in evaluating petitioner's participation in counseling and therapy, I cannot conclude that he has made every effort to engage in a serious form of counselling, which is particularly evident by the fact that petitioner still drinks, sometimes on a daily basis for as much as a month. My perception of petitioner's own testimony as to his entry into the Seabrook Program, was that his enrollment was not done primarily for the purposes of attempting to solve his alcohol problem, but was an attempt to get back at his employer with whom he had a dispute which resulted in his termination, by causing his employer to directly or indirectly bear the costs of his treatment.

Finally, I think it is reasonable to assume that both positions in which petitioner is interested in working at the casinos, i.e., electronic data processor or slot booth cashier, require a person who is responsible and dependable.

I **CONCLUDE** that petitioner has not affirmatively demonstrated his rehabilitation.

ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner's application for a casino employee license be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 5048-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

2-1-85
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

2.4.85
DATE

Paula Wells
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 06 1985
DATE

Ronald L. Parkinson
OFFICE OF ADMINISTRATIVE LAW

ml/E

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Letter from Joseph Turner, dated June 1, 1984

P-2 Letter from Harry M. Shallcross, Ph.D. to Casino Control Commission, dated October 23, 1984

P-3 Letter from Steven M. Stolar, dated May 31, 1984

P-4 Letter from Nicholas S. Vecchione, dated June 1, 1984

P-5 Letter from Mark F. Stullenburger to New Jersey Casino Control Commission, dated June 8, 1984

P-6 Letter from Charles Maines, undated

P-7 Letter from Philip Marzullo, dated July 22, 1983

R-1 Respondent's FBI rap sheet

R-2 Arrest report, dated July 29, 1972 (Millville Police Department)

R-3 Certified letter from Virginia M. Gale, Court Clerk for Hamilton Township, dated July 31, 1984

R-4 Accusation (2), dated August 7, 1975

R-5 Certified Judgment of Conviction, dated November 16, 1976 (2 pages); Order Terminating Probation, dated March 11, 1974 (4 pages)

R-6 Arrest report, City of Millville Police Department, dated October 10, 1975

R-7 Arrest record re respondent, Cape May Police Department, for arrests, dated June 1, 1976, August 17, 1975 and August 23, 1975

R-8 New Jersey State Police Investigation Report, dated February 16, 1983; New Jersey State Police Supplementary Investigation Report, dated March 21, 1983; New Jersey State Police Supplementary Investigation Report, dated April 27, 1983; New Jersey State Police Arrest Report, dated February 16, 1983; New Jersey State Police Arrest Report, dated March 21, 1983 (5 pages)

R-9 Two summonses issued in the matter of State of New Jersey v. Richard Romanishin, by the Buena Vista Township Municipal Court, dated March 7, 1983; and summons issued in the matter of Robert Romanishin, dated February 16, 1983 (3 pages)

R-10 Notice of Trial by a Jury In the Matter of the State of Florida v. Richard Romanishin, dated June 8, 1977

R-11 Respondent's Personal History Disclosure Form-2A, dated September 29, 1983

R-12 Letter from Division of Gaming Enforcement to Casino Control Commission, dated May 4, 1984 (Marked into evidence for purposes of notification of allegations upon which the Division relied in recommending denial of petitioner's licenses).

LIST OF WITNESSES

FOR PETITIONER:

Richard Romanishin

FOR RESPONENT:

David Chippendale

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-294
OAL DOCKET NO. CCC 8822-84
LICENSE NO. 03942-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	FINAL ORDER
v.		
RENEE L. SCOTT,	:	
Respondent.	:	

This matter having been transmitted to the Office of Administrative Law for a hearing; and the Division of Gaming Enforcement having subsequently requested to withdraw its complaint for revocation of Renee L. Scott's casino employee license; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of March 27, 1985,

IT IS on this 17th day of May 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter is adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement against Renee L. Scott is dismissed without prejudice; and

IT IS FURTHER ORDERED that copies of this final order be served upon the Renee L. Scott the Division of Gaming

Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
WITHDRAWAL
OAL DKT. NO. CCC 8822-84
AGENCY DKT. NO. 84-294

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner,
v.
RENEE L. SCOTT,
Respondent.

Paul A. Vagianos, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Renee L. Scott, pro se

Record Closed: February 7, 1985 Decided: February 20, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Renee L. Scott, respondent, the holder of a casino hotel employee registration number 02281-40 and casino employee license number 03942-21. The Division alleged that the respondent had committed violations of the Casino Control Act (Act) by reason of criminal misconduct, for which the Division sought the imposition of a penalty, pursuant to section 129 of the Act. The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 18, 1984. By letter dated September 24, 1984, the Commission notified the respondent of the complaint and advised her of her right to a hearing. By letter filed with the Commission on October 1, 1984, the respondent requested a hearing. On December 7, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT AND CONCLUSION

By letter filed with the Office of Administrative Law on February 7, 1985, the Division withdrew its complaint against the respondent. I **FIND** and **CONCLUDE** that there is no longer a contested case before the Office of Administrative Law.

DISPOSITION

It is **ORDERED** that the proceedings before the Office of Administrative Law be **DISMISSED;** and it is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the Casino Control Act and the regulations adopted thereunder.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 8822-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 20, 1985
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

February 21, 1985
DATE

Bernadette D. Frey
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 25 1985
DATE

Ronald L. Rubenstein
OFFICE OF ADMINISTRATIVE LAW

ml

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-38
OAL DOCKET NO. CCC 1500-84
REGISTRATION NO. 29576-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	:	
V.	:	FINAL ORDER
WILLIAM SIMONSEN, Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on August 22, 1984, recommending that the complaint of the Division of Gaming Enforcement filed against William Simonsen be dismissed; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on October 9, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of October 24, 1984, to reject certain conclusions of law contained in the said Initial Decision and to revoke the respondent's registration,

IT IS on this 25th day of JANUARY 1985, ORDERED that the following conclusion of law contained in the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected:

1. Mr. Simonsen has established by clear and convincing evidence his rehabilitation from a July 1983 conviction for theft by failure to make required disposition (third degree) contrary to N.J.S.A. 2C:20-9, a listed disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). [Initial Decision at 5].

IT IS FURTHER ORDERED that the casino hotel employee registration issued to William Simonsen be and hereby is revoked based upon the findings contained in the Initial Decision of the Office of Administrative Law, as modified, which is incorporated herein by reference and made a part hereof, and further upon the following finding:

1. Mr. Simonsen has not adequately demonstrated rehabilitation from his disqualification considering: (a) the passage of little more than one year since Mr. Simonsen's conviction for the disqualifying offense; (b) his continued probationary status which appears will terminate in June 1986; (c) restitution has not been completed; and (d) the serious nature of the crime.

IT IS FURTHER ORDERED that William Simonsen is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon William Simonsen, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1500-84

AGENCY DKT. NO. 84-38

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

WILLIAM SIMONSEN,

Respondent.

APPEARANCES:

Paul Vagianos, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

William Simonsen, respondent, pro se

Record Closed: July 20, 1984 Decided: August 21, 1984

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint of the Division of Gaming Enforcement (hereinafter referred to as "Division"), filed with the Casino Control Commission on February 10, 1984, seeking the revocation of the respondent's registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Simonsen requested a hearing and the matter was referred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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At the prehearing conference held on April 25, 1984, the parties agreed that the issues are:

A. Whether the respondent is disqualified for registration, pursuant to N.J.S.A. 5:12-19b and 5:12-86c, as a result of the alleged fact that he pled guilty to the charge of theft by failure to make required disposition, a violation of N.J.S.A. 2C:20-9.

B. Whether the respondent's action relating to this alleged criminal offense makes his continued registration inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

C. Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

Based on the testimony and exhibits received at the hearing on July 20, 1984, I **FIND** that the pertinent facts in this matter are not in dispute.

At the time of the hearing, Mr. Simonsen was 29 years old. Mr. Simonsen had been employed periodically by Thom McAn Shoe Company (hereinafter referred to as "Thom McAn") from 1970 to the date he was fired, March 8, 1983. When he was fired by Thom McAn, Mr. Simonsen was working as the manager of a store, and in that capacity was responsible for the daily deposit of the sales receipts. Between February 21, 1983 and March 30, 1983, Mr. Simonsen failed to deposit approximately $5,000.

Mr. Simonsen started to use cocaine approximately three months before February 21, 1983, for no apparent reason other than that he had acquaintances at the time who were taking drugs. The respondent became dependent on cocaine and he used both his salary and the money he took from the cash receipts belonging to Thom McAn to purchase cocaine. According to Mr. Simonsen, he planned to replace the money he had taken and before he was fired, Mr. Simonsen applied for a bank loan; however, his application was refused by the bank (R-4). According to the respondent he was fired because of his attitude and not because he had taken the money.

After respondent was fired, Edward Sauer, on behalf of Thom McAn, signed a complaint alleging that Mr. Simonsen had failed to deposit $5,120 in Thom McAn's account

at the First National Bank of New Jersey (P-3). Apparently, this shortage was discovered during an audit by Thom McAn (P-2). Mr. Simonsen was indicted for theft by failure to make required disposition, a violation of N.J.S.A. 2C:20-9 (P-1). After plea bargaining, the respondent pled guilty and was given a jail sentence of 180 days, was placed on probation for a period of two and one-half years and was required to make restitution in the amount of $5,120 (P-1). Mr. Simonsen has not been required to take a drug rehabilitation course as part of his probation.

In April 1983, Mr. Simonsen got a job with the Golden Nugget Hotel and Casino as a cashier-food server and for the three-month period prior to the hearing he has been employed as a cook by Golden Nugget Hotel and Casino. The management of Golden Nugget Hotel and Casino was aware of respondent's conviction when he was hired.

At the time of the hearing, Mr. Simonsen had completed approximately one year of his probation period and was making restitution in installment payments of $50 a week. Mr. Simonsen stopped using cocaine when he was fired from Thom McAn and he recognized that he had done a stupid thing. According to Mr. Simonsen, he has not used any drugs since he was fired by Thom McAn and he no longer socializes with the acquaintances who initially involved him with drugs.

At the hearing, Mr. Simonsen did not deny that he took the money from Thom McAn; however, he denied that he intended to steal this money. Mr. Simonsen stated that because he planned to repay the money, he did not make any fraudulent bookkeeping entries in order to hide the fact that he took this money. At the time he took the money, Mr. Simonsen did not think he was committing a criminal action, and based on the policy of Thom McAn (R-3), he thought that if the shortage were discovered he would just lose his job.

In support of his position that he has been rehabilitated, Mr. Simonsen presented:

The July 6, 1984 letter from a manager employed by the Golden Nugget Hotel and Casino stating that the respondent is a dependable employee who has properly handled cash and who is considerate of his fellow employees (R-5).

The letter of Frank Bongiovanni stating that he has known respondent for over 14 years and that his criminal action was an isolated incident which should not result in the revocation of his registration (R-6).

The July 11, 1984 letter of Connie DeCicco stating that she has known the respondent for six years and that the respondent has worked with her husband for a couple of years, and that he is a hard working and honest individual who made one mistake (R-7).

The July 10, 1984 letter of Mary C. Ellingsworth stating that she has been the respondent's landlord for two and one-half years, that he pays his rent on time, that he is trustworthy and considerate, and that he helps her by doing small jobs around the house (R-8).

The July 11, 1984 letter of Gayle C. Konopka stating that the respondent is an upstanding and responsible person who has paid his debt to society (R-9).

The July 10, 1984 letter of William O'Donnell stating that the respondent has been a regular customer at his WAWA Market store for the past six months and that he is an honest and sincere person with characteristics that Mr. O'Donnell looks for when he hires an employee (R-10).

The July 11, 1984 letter of Anthony Platanella stating that he has known the respondent for 15 years and that respondent worked for him for several years as a bartender. Mr. Platanella asserted that respondent's criminal action was an isolated incident and that he would not have any concern about rehiring respondent (R-11).

Based on the facts, I **CONCLUDE** that the Division has shown that Mr. Simonsen was convicted of a statutory disqualifier.

The Casino Control Act provides that a person can overcome the prohibitions against registration by affirmatively demonstrating his/her rehabilitation, and N.J.S.A. 5:12-91c sets forth the following eight specific criteria to be considered to determine whether or not a person has been rehabilitated:

(1) The nature and duties of the registrant's position.

(2) The nature and seriousness of the offenses.

(3) The circumstances under which the offense occurred.

(4) The date of the offense.

(5) The age of the registrant when the offense was committed.

(6) Whether the offense was an isolated or repeated incident.

(7) Any social conditions which may have contributed to the offense.

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

In his closing, Mr. Vagianos argued that respondent admitted that he had taken the money in order to support his drug habit and did not show that his use of drugs was due to any traumatic event or stress. Mr. Vagianos stated that respondent stopped taking drugs because he lost his job and no longer had any money, and that there is no reason to assume that he will not resume taking drugs after he completes his probation period. Mr. Vagianos noted that Mr. Simonsen had a responsible position with Thom McAn and that he did not admit to Thom McAn that he had taken the money and voluntarily agree to make restitution. The fact that respondent is now making restitution is due to the plea bargaining agreement which avoided the possibility of a more extensive jail sentence.

On his own behalf, Mr. Simonsen stated that he had made one mistake and there will be no recurrence. Mr. Simonsen stated that since he was aware that one of the factors to be considered in determining whether or not he was rehabilitated was the responsibility of his position, he requested a lateral transfer to the position of cook because he felt it would be better if his current job did not involve the handling of money.

Based on the facts, I **CONCLUDE** that Mr. Simonsen has demonstrated his rehabilitation. The respondent's conviction is an isolated incident prompted by his reliance on drugs and he is now making the required restitution, and from the facts, there is no reason to believe that he will resume taking drugs in the future. In addition, I **CONCLUDE** that the continued registration of respondent would not be inimical to the policy of the Casino Control Act.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 21, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

22 [illegible]
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 24 1984
DATE

Ronald J. Rubin
OFFICE OF ADMINISTRATIVE LAW

ml/EE

APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Indictment filed against William Simonsen and the disposition on the indictment

P-2 Atlantic City Police Department Investigation Report, dated March 30, 1983

P-3 Complaint against William Simonsen made by Edward Sauer on behalf of Thom McAn Shoe Company, dated March 30, 1983

FOR THE RESPONDENT:

R-1 Store Audit Report, dated May 4, 1981

R-2 Audit Variation Report, dated January 15-16, 1981

R-3 Security Policy of Thom McAn, signed by William Simonsen on August 26, 1982

R-4 Letter from the First National State Bank of South Jersey to William Simonsen, dated March 14, 1983

R-5 Letter from a manager employed by Golden Nugget Hotel and Casino, dated July 6, 1984

R-6 Letter from Frank Bongiovanni to Judge Tylutki

R-7 Letter from Connie DeCicco, dated July 11, 1984

R-8 Letter from Mary C. Ellingsworth, dated July 10, 1984

R-9 Letter from Gayle Konopka, dated July 11, 1984

R-10 Letter from William O'Donnell, dated July 10, 1984

R-11 Letter from Anthony Platanella, dated July 11, 1984

OAL DKT. NO. CCC 1500-84

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

William Simonsen

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-EA-107
OAL DOCKET NO. CCC 7430-83; 971-84
APP. NO. 34524-21

IN THE MATTER OF THE APPLICATION OF
ALVIN L. SKLOFF FOR A CASINO
EMPLOYEE LICENSE

FINAL
ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the initial decision of the Office of Administrative Law filed with the Commission on July 11, 1984, in which the Administrative Law Judge concluded that the applicant has abandoned the right to a hearing on his contested application for a casino employee license; and this being the second time he has abandoned his right to a hearing; and no exceptions or objections having been filed; and the Commission having considered the entire record in this matter and having resolved at its public meeting on August 22, 1984, for good cause shown to affirm and adopt the said initial decision and to deny the application for licensure,

IT IS on this 23rd day of August 1984, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Alvin L. Skloff be and hereby is denied based upon the information set forth in the letter-report of the Division of Gaming Enforcement dated

June 29, 1983, and an undated report received by the Commission on November 17, 1983, which are incorporated herein by reference and made a part hereof, and based further upon the applicant's failure to establish by clear and convincing evidence his qualifications for licensure pursuant to N.J.S.A. 5:12-80(a), 89(b)(2), and 90(b) of the Casino Control Act; and

IT IS FURTHER ORDERED that the applicant is prohibited from applying for or obtaining any license, registration, qualification or approval required under the provisions of the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon the applicant, the Division of Gaming Enforcement and all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 971-84

(REMAND OF CCC 7430-83)

AGENCY DKT. NO. 83-EA-107

ALVIN L. SKLOFF,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

APPEARANCES:

Thomas C. Brown, Esq., for the petitioner

Rosemary Quinn, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 26, 1984 Decided: July 10, 1984

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the application of Alvin L. Skloff for a license as a casino junket representative. The Casino Control Commission advised the petitioner that there was a substantial possibility that his application would be denied based on the objections of the Division of Gaming Enforcement as set forth in its letter of June 29, 1983, and supplemented on November 16, 1983. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled in this matter for November 16, 1983, and the petitioner failed to appear and failed to respond to a letter sent by the Office of Administrative Law requesting an explanation of his nonappearance. Based on these facts, Administrative Law Judge Norman D. Smith on December 28, 1983, issued an Initial Decision concluding that Mr. Skloff had abandoned his right to a hearing. The Casino Control Commission accepted Mr. Skloff's explanation for his nonappearance and remanded the matter to the Office of Administrative Law by Order, dated February 8, 1984.

Thomas C. Brown, Esq. appeared on behalf of Alvin L. Skloff at the prehearing conference which was held on March 9, 1984. At this prehearing conference, the parties agreed that the hearing would be held on June 27 and 28, 1984, and that discovery in this matter would be concluded at least 20 days before the first day of the hearing. A prehearing order was issued on March 12, 1984, and the parties also received a notice from the Office of Administrative Law confirming that the hearing would be held on June 27 and 28, 1984.

During a telephone conference call on June 26, 1984, Mr. Brown indicated that there was a delay in receiving some information from the Deputy Attorney General and that when he reviewed this information with Mr. Skloff, the petitioner decided that he did not want to pursue his application at this time. This decision was made by Mr. Skloff shortly before Mr. Brown called Ms. Quinn and my office. Mr. Brown stated that Mr. Skloff wanted to withdraw his request for a hearing.

Ms. Quinn stated that she would not agree to the withdrawal of the request for a hearing at this time and that if Mr. Skloff did not want to continue the matter, it should be considered to be abandoned.

Based on the foregoing, I **FIND** that the petitioner has not presented an acceptable explanation for his request to withdraw the matter at this time and since Mr. Skloff will not appear at the hearing on June 27 and 28, 1984, I **CONCLUDE** that the petitioner has abandoned his request for a hearing. Therefore, I **ORDER** that the proceedings in this matter be **DISMISSED.**

It is further **ORDERED** that this matter be returned to the Casino Control Commission for appropriate action in accordance with the provisions of the Casino Control Act and the regulations promulgated thereunder.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 10, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

July 11, 1984
DATE

Paula Weiss
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 13 1984
DATE

Ronald L. Parker/jao
OFFICE OF ADMINISTRATIVE LAW

ij/ee

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 84-253; 84-EA-78
OAL DOCKET NO. CCC 4360-84
REG./APP. NOS. 46351-40;
46057-22

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

GILBERT SMITH,

Respondent.

AND

APPLICATION OF GILBERT SMITH FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of April 10, 1985,

IT IS on this 23rd day of May 1985, ORDERED that the initial decision in this matter is modified as follows:

1. Mr. Smith's 1981 conviction for theft by unlawful taking, third degree, in violation of N.J.S.A. 2C:20-3, is a disqualifying conviction under N.J.S.A. 5:12-86(c)(1) and is an additional basis for his disqualification.

2. Mr. Smith's failure to disclose material information pursuant to N.J.S.A. 5:12-86(b), as well as his two disqualifying convictions under N.J.S.A. 5:12-86(c)(1), have an adverse impact on his qualifications to retain his casino hotel employee registration under N.J.S.A. 5:12-91. The finding contained in the initial decision that Mr. Smith has failed to demonstrate his rehabilitation from these disqualifications for purposes of his application for a casino employee license is equally applicable to his qualifications to hold a casino hotel employee registration. The administrative law judge having appropriately consolidated these matters, the Commission adopts those findings and conclusions as to the complaint against Mr. Smith's casino hotel employee registration, and no further action with respect to the registration is required in the OAL.

3. The initial decision at page 1, footnote 1, is corrected to read "N.J.S.A. 5:12-86(c)" rather than "N.J.S.A. 5:12-86(d)" and "91(b)" rather than "91(6)."

IT IS FURTHER ORDERED that the application of Gilbert Smith for a casino employee license is denied and the casino hotel employee registration of Gilbert Smith is revoked substantially for the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Gilbert Smith is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Gilbert Smith, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4360-84
AGENCY DKT. NO. 84-EA-78

GILBERT SMITH,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Gilbert Smith, pro se

Anthony D'Elia, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: January 18, 1985 Decided: March 5, 1985

BEFORE **JEFF S. MASIN,** ALJ:

Gilbert Smith applied to the Casino Control Commission for licensure as a casino employee with a designated position of maintenance and cleaning. The Division of Gaming Enforcement objected to Mr. Smith's licensure in a letter to the Commission, dated April 9, 1984. Mr. Smith requested a hearing on the proposed denial and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held before Administrative Law Judge Jeff S. Masin on January 18, 1985, at the Haddonfield Municipal Court.

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At the time of the hearing, counsel for the Division advised that there was a pending action to revoke Mr. Smith's casino hotel employee registration for the same reasons as the Division was opposing his licensure as a casino employee. The complaint seeking revocation was filed on August 2, 1984. During the hearing, reference was made to the possibility of consolidating the pending revocation proceeding with this case. It appears that the revocation case was never actually transmitted to the OAL by the Commission. By this decision, it is **ORDERED** that the revocation proceeding be consolidated with this matter. Since the facts and the legal analysis are essentially the same in both matters, a decision on the revocation case will be rendered on the basis of the record established in this case. N.J.A.C. 1:1-14.4. The facts and circumstances relevant to the license proceeding are equally relevant to the revocation proceeding.[1]

THE ISSUES

The Prehearing Order, issued on August 27, 1984, lists a number of issues for consideration. These are:

A. Does the applicant have a conviction for robbery in June 1979? If so, is such a conviction an enumerated disqualifying offense under Section 86c of the Casino Control Act, N.J.S.A. 5:12-1 et seq.?

B. Does the applicant's criminal record indicate that he does not possess the requisite good character, honesty and integrity which he is required to prove by clear and convincing evidence in order to obtain licensure?

C. Has the applicant rehabilitated himself satisfactorily from the adverse affects of his prior criminal activities, thus allowing licensure, pursuant to N.J.S.A. 5:12-90(h)?

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[1] The complaint is based on the 1979 robbery and alleges that continued registation would be inimical under N.J.S.A. 5:12-86(d), and Smith is disqualified from registration under 86(c) and 91(6).

D. Did the applicant fail to disclose to the Commission arrests and convictions which are listed in a letter of April 9, 1984, with the exception of a March 1981 incident which he did disclose? If there was non-disclosure, was it intentional and of such a nature as to require disqualification, pursuant to N.J.S.A. 5:12-86(b)?

CONCLUSION

For the reasons stated below, I **CONCLUDE** that Mr. Smith did voluntarily and knowingly fail to disclose several arrests and convictions for the express purpose of attempting to obtain his desired employment without the Commission obtaining knowledge of these arrests and convictions. Therefore, I **CONCLUDE** that he has violated N.J.S.A. 5:12-86(b), in that he has willfully and intentionally withheld information which is material to the licensing process. His application for licensure must therefore be denied. In addition, I **CONCLUDE** that Mr. Smith was convicted of robbery in June 1979 and that such a conviction is an enumerated disqualifying offense under Section 86(c) of the Casino Control Act. In view of Mr. Smith's failure to disclose his convictions it is not necessary to consider whether he has rehabilitated himself, since rehabilitation does not exist as a means of curing a failure to disclose material information. Finally, I **CONCLUDE** that Mr. Smith has not proven by clear and convincing evidence that he has the requisite good character, honesty and integrity required for licensure as a casino employee and therefore the license must be denied on these grounds as well.

THE EVIDENCE

Gilbert Smith testified in his own behalf. He admitted that he had been convicted of robbery in 1979, a conviction evidenced, in addition to his own admission, by a Judgment of Conviction issued by Honorable A. Donald Bigley, J.S.C., on July 30, 1979. This Judgment of Conviction shows a plea of guilty to Count 1 of Indictment 31-78 which charged Mr. Smith with robbery of John Saltonis, in violation of N.J.S.A. 2A:141-1. According to Mr. Smith, he was with the person who actually committed the robbery and was charged as an accomplice. He claimed that he never saw the knife that the police said had been used by the other person to effect the robbery of $96 from Mr. Saltonis. In addition to the money, credit cards were taken. The robbery occurred on the street. Mr. Smith was sentenced to 364 days in the County Jail. He served six months and then was placed on work release. He was not placed on probation after his release from jail.

In addition to the 1979 incident, Mr. Smith admitted that he had been charged with other offenses. For instance, in addition to his robbery conviction, he also had been charged with robbery in the second degree, a violation of 2C:15-1, in Indictment 2122-80, issued by the Camden County Grand Jury. This indictment was dismissed as part of a plea bargain. He was also charged in Indictment 1516-80 with four counts of robbery in the second degree. This indictment was also dismissed in a plea arrangement when he pled guilty to an accusation, No. 1999-80, which charged him with three counts of theft by unlawful taking, a violation of N.J.S.A. 2C:20-3. Indictment 1516-80 and the Accusation appear to arise from the same incident. Smith was placed on probation for three years on each of the three counts of the Accusation and was also assessed Violent Crime Compensation Board penalties. The probations ran concurrently and, according to the Judgment of Conviction, the probations were permitted to terminate if the defendant was steadily employed for 18 months.[2] Mr. Smith explained his involvement in the theft by unlawful taking matters by claiming that the girls involved as alleged victims were working in a store. He knew them. They were stealing money from the store and giving him some. He was aware that they were stealing the money. According to Smith, he completed his probation in October of 1984 and also paid his fine.

Mr. Smith was also arrested for shoplifting in Korvettes in 1978. This charge was dismissed. He claimed that he was with several others who he did not know were going to steal anything. He did, however, take something when the others began to shoplift. Smith was 20 years old at the time.

The April 9, 1984 letter from the Division to the Commission also listed other matters. Smith acknowledged a shoplifting arrest from Bamberger's Department store in Cherry Hill in 1978. Smith admitted at the hearing that he was shoplifting. He was fined for this offense. In addition, on August 20, 1978, he was arrested for shoplifting in Camden. He was again fined. Smith explained this matter as having arisen from circumstances in which he found himself with no food in his house and he was trying to get something to eat. He was not working at the time and was not receiving welfare.

In 1977, Smith was convicted in municipal court of possession of an offensive weapon. He testified that he had a knife. He was fined $75.

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[2]According to a letter from his probation officer, Smith's probation was scheduled to terminate on September 18, 1984. Smith testified that it did terminate in October 1984.

On March 3, 1981, Smith was arrested for possession of marijuana under 25 grams, a violation of N.J.S.A. 24:21-20a(3). He was granted a conditional discharge in the Camden Municipal Court.

Mr. Smith acknowledged that he did not list the arrests listed above on the Personal History Disclosure Form - 2A (PHDF) which he filed with the Commission on April 11, 1983. He only listed a "larceny" matter in the Camden County Court for which he was placed on probation. The date of disposition was listed as May 7, 1981, and this is apparently the incident referred to in the Accusation for which he entered the plea on August 3, 1981. In fact, the charge was not larceny but theft by unlawful taking.

Mr. Smith explained that he did not list the arrests because he needed a job and felt that if he listed the arrests and convictions he would not get a job. He was aware that he was required to list arrests and convictions.

Smith testified that when he was questioned about his arrests by Investigator Brooks of the Division he told Brooks that he had forgotten about the arrests. In fact, he admitted that he was lying to Brooks.

Mr. Smith was employed at the Golden Nugget from April 1983 through May 1984 in the housekeeping and maintenance department. Prior to that, he was employed at the Arthur Gould Construction Company, working for approximately six to seven months up to March 1983. His only employment in the casino industry was the employment at the Golden Nugget. He now has a disability application pending and is not working.

Mr. Smith testified that he is now a changed man and that all of his prior criminal involvements are "history." He has rehabilitated himself and not been in any trouble since 1981. He no longer hangs out with the same people. He presented several character references which have been read and considered by this judge.

The Division presented no witnesses, choosing only to introduce the documentation of the arrests and convictions and the PHDF form.

ANALYSIS

From the testimony presented by Mr. Smith, it is quite clear that he cannot receive a license. He admitted that he purposely, knowingly and voluntarily withheld

information of a material nature concerning his arrests and convictions from the Commission with the full intent of deceiving the Commission in order to obtain a license. I so **FIND.** In his closing remarks, he noted that he "lied because he thought it would do him some good." No clearer situation of an intentional non-disclosure can be conceived of. Smith must be denied licensure, pursuant to N.J.S.A. 5:12-86(b), because he has done exactly the thing that that section of the Casino Control Act is aimed at preventing, that is, lying to the licensing agency concerning information material to a determination of one's fitness for licensure.

The admitted robbery conviction in 1979 constitutes an enumerated disqualifying offense. This bars the applicant from licensure, pursuant to N.J.S.A. 5:12-86(c).

Since Smith is otherwise disqualified from licensure, it is not necessary to determine whether he has rehabilitated himself. However, it is quite clear that since he lied to the Commission in connection with his application, he cannot be found to have changed so much from his prior criminal tendencies as to be considered rehabilitated.

In view of Smith's prior criminal record and his deceptive actions toward the Commission in this licensing proceeding, both in connection with his original application and his interview with Investigator Brooks, Smith clearly does not have the requisite good character, honesty and integrity necessary for licensure. Since he must prove the same by clear and convincing evidence, he has fallen woefully short of that requirement.

For the reasons expressed, Mr. Smith cannot be licensed. His application must be **DENIED.** It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

The order for consolidation of the revocation proceeding shall be subject to interlocutary review, pursuant to N.J.A.C. 1:1-9.7. In the absence of any modification by

the Commission, a decision on the question of revocation will be rendered upon receipt of the Commission's Final Decision in the licensing case.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 5, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

March 5, 1985
DATE

Bernadette P. Fraser
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 08 1985
DATE

Ronald L. Parker jsa
OFFICE OF ADMINISTRATIVE LAW

ml

910

EVIDENCE LIST

On behalf of respondent:

R-1 Indictment 31-78 with attached Judgment of Conviction and Order for Committment (certified)

R-2 Indictment 2122-80 with attached Order of Dismissal

R-3 Indictment 1516-80 with attached Judgment of Dismissal

R-4 Accusation 1999-80 with attached Judgment of Conviction (certified)

R-5 Personal History Disclosure Form - 2A, received April 1983 by the Casino Control Commission

R-6 Complaint, In the Matter of State of New Jersey Department of Law and Public Safety, Division of Gaming Enforcement v. Gilbert Smith, Casino Control Commission Docket No. 84-253, filed August 2, 1984

On behalf of petitioner:

P-1 Letter of August 22, 1984, from the Smith family

P-2 Letter of August 20, 1984, from Paul Kennedy, Camden County Probation Department

P-3 Letter of August 20, 1984, from Clark Hohney, Sr.

P-4 Letter of August 22, 1984, from Rhonda Moyer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-180
OAL DOCKET NO. CCC 5420-84
REGISTRATION NO. 22095-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
JOSEPH MICHAEL THOMAS,		
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on January 24, 1985, recommending the complaint be dismissed, and no exceptions having been filed; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of March 6, 1985, to modify the said Initial Decision to correct a statutory citation and to dismiss the complaint,

IT IS on this 14th day of March 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. The citation at page 2 of the Initial Decision should be corrected from "N.J.S.A. 5:12-89C-4" to read "N.J.S.A. 5:12-86(c)(4)."

IT IS FURTHER ORDERED that the complaint against respondent's casino hotel employee registration be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Joseph Michael Thomas, the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5420-84

AGENCY DKT. NO. 84-180

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

JOSEPH M. THOMAS,

Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Sonia Wagner, Esq., for respondent (Grossman & Wagner, attorneys)

Record Closed: November 19, 1984 Decided: January 23, 1985

BEFORE **NORMAN D. SMITH,** ALJ: c/b

The Division of Gaming Enforcement seeks to revoke the respondent's casino employee license and his hotel employee registration because of his arrest and conviction record, raising the following issues: (a) Does the respondent's arrest and conviction record render his licensure inimical pursuant to N.J.S.A. 5:12-86(c)4? (b) With regard to the respondent's casino employee license only, does the respondent have the good character, honesty and integrity required by N.J.S.A. 5:12-90B and 5:12-89(b)2? (c) Can the respondent establish his rehabilitation pursuant to N.J.S.A. 5:12-90(h) and 5:12-91(d)?

On October 15, 1979, at the age of 19, Joseph Thomas was with friends and had been drinking. At approximately 5:15 a.m., he and his friends went into the Olympic Diner in Pleasantville. When he went to the register to pay for his food, the cashier opened the register and Mr. Thomas reached his hand in, pulled out a little over $200 and ran out the door. He ultimately pled guilty to thef in violation of N.J.S.A. 2C:20-3.

On August 28, 1982, after tending bar, he sat in a car in the parking lot at the Mediterranean Lounge in Somers Point and shared a marijuana cigarette with at least one other person. Police approached and arrested Mr. Thomas and two of his companions. He ultimately pled guilty to possession of a small amount of methamphetamines which were also found in the car. A charge for use of marijuana was dismissed in a plea bargain.

On July 28, 1983, Mr. Thomas was discovered to be growing marijuana in the back room of an apartment that he rented from a police officer. He pled guilty to growing marijuana in violation of N.J.S.A. 2A:170-25.1.

The foregoing constitutes the arrest and conviction record of Mr. Thomas. Mr. Thomas was clearly a young man with wild tendencies and no respect for the law. However, his convictions do not render his licensuring inimical to the casino industry in the sense intended in N.J.S.A. 5:12-89C-4.

The remaining question then is whether or not Mr. Thomas currently displays the good character, honesty and integrity required by this statute. I **CONCLUDE** that he does, based upon a remarkable turnaround in his pattern of conduct. In 1980, Mr. Thomas married a women, who had a then seven-year-old son by a former marriage. Two years ago, the couple had the first of their own two children, now aged two years, six months. Mr. Thomas became a licensed dealer and has earned a strong reputation for good character, honesty and integrity. He is a trusted and respected dealer who is frequently called upon to supervise when supervision is short in the casino. I was impressed by the testimony of Shawn Quick and Louis Mauro, both supervisors at the Sands, who have observed Mr. Thomas for two and one-half to three years. He is reliable, honest, extremely competent and interacts well with the customers. He is well liked by his supervisors and his fellow employees.

Mr. Thomas took the stand and has eschewed the lawlessness of his youth. Although still young, he has clearly matured dramatically in the last two years. He is at the age when such dramatic maturity is not only possible, but plausible and common in the fortunate person. He is indeed fortunate in having married a woman who supports him emotionally, and whose family supports him emotionally.

If rehabilitation means anything, and the statute says that it does, then I must find Mr. Thomas to have been rehabilitated, even though in a technical sense I need not make this finding.

In **CONCLUSION,** he presents himself today as a responsible and successful employee of the Sands, a reliable husband and father to three children, and a man of good character, honesty and integrity.

For the foregoing reasons, it is hereby **ORDERED** that the complaints against Mr. Thomas be **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE

NORMAN D. SMITH, ALJ c/b

Receipt Acknowledged:

DATE January 24 1985

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 28 1985

DATE

OFFICE OF ADMINISTRATIVE LAW

bq916

WITNESSES

Frank Siracuse
Shawn Quick
Frank Guinto
Michael Lescas
Louis Mauro
Thomas Horton
Robert String
John Krzywulak
Kenneth Kerckes
Sammuel Siracusa
Donna Thomas
Joseph Thomas

EXHIBITS

P-1 Complaint - Egg Harbor Township Police Department, dated July 28, 1983
P-2 Judgment of Conviction, dated December 10, 1982
P-3 Investigation report, Pleasantville Police Department, dated October 15, 1979
P-4 Supplementary Investigation report, Pleasantville Police Department
P-5 Complaint - City of Pleasantville, dated October 24, 1979
P-6 Investigation report, Somers Point Police Department, dated August 29, 1982
P-7 Complaint - City of Somers Point, dated August 31, 1982
P-8 Laboratory Report, dated November 29, 1982
P-9 Indictment number 9-326-82-B, Atlantic County
P-10 Judgment of Conviction
P-11 Request for examination of evidence

R-1 Consent Order dismissing complaint, dated October 26, 1983

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-26
APPLICATION NO. 44938-21
OAL DOCKET NO. CCC 02898-84

IN THE MATTER OF THE APPLICATION
OF JOSEPH G. VERRECCHIO FOR A
CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on October 5, 1984, recommending that the casino employee license application of Joseph G. Verrecchio be granted; and neither party having filed exceptions or objections thereto; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of November 15, 1984, to modify the Initial Decision and grant the application,

IT IS on this 13th day of February 1985, ORDERED that the Administrative Law Judge's conclusions on the issue of Verrecchio's disqualification be and hereby are modified as follows:

1. The Administrative Law Judge concluded that Verrecchio is disqualified pursuant to N.J.S.A. 5:12-86(c)(3) as a consequence of his conviction on May 13, 1983, for conspiracy to distribute a controlled dangerous substance in violation of

21 U.S.C.A. 841(a)(1) and (b)(1)(B) which she found to be equivalent to N.J.S.A. 24:21-19(a)(1), a statutory disqualifying offense under N.J.S.A. 5:12-86(c)(3). The ALJ further found that the applicant was rehabilitated from the disqualification pursuant to N.J.S.A. 5:12-90(h).

2. The Administrative Law Judge's analysis is at variance with the Commission's interpretation of N.J.S.A. 5:12-86(c). While both N.J.S.A. 5:12-86(c)(1) and (2) provide for disqualification of any person who has conspired to commit an offense enumerated in such subsections, there is no comparable provision under N.J.S.A. 5:12-86(c)(3). Thus, the conviction for conspiracy to distribute a controlled dangerous substance is neither an automatic statutory disqualifier nor the equivalent of one under N.J.S.A. 5:12-86(c)(3). Therefore, the applicant is not disqualified pursuant to N.J.S.A. 5:12-86(c)(3).

   The proper analytical approach is to evaluate the conspiracy conviction in light of N.J.S.A. 5:12-86(c)(4). For the reasons enumerated by the Administrative Law Judge in her affirmative finding of rehabilitation pursuant to N.J.S.A. 5:12-90(h), the Commission hereby concludes that this conviction is not inimical under N.J.S.A. 5:12-86(c)(4).

IT IS FURTHER ORDERED that the casino employee license application of Joseph G. Verrecchio be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Joseph G. Verrecchio, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2898-84

AGENCY DKT. NO. 84-EA-26

JOSEPH G. VERRECCHIO,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Joseph G. Verrecchio, pro se

Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: August 21, 1984 Decided: October 5, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Joseph G. Verrecchio, applied for a casino employee license permitting him to work as a craps dealer. By letter report to the Casino Control Commission dated January 17, 1984, the Division of Gaming Enforcement objected to Mr. Verrecchio's licensure, whereupon Mr. Verrecchio requested a hearing. The matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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After notice, a prehearing conference was held resulting in the entry of a prehearing order dated June 6, 1984 which defined the following issues to be addressed at the hearing:

1. Whether petitioner should be denied a casino employee license pursuant to Section 86c(3) of the Casino Control Act, as a result of his guilty plea to conspiracy to distribute methamphetamine in violation of 21 U.S.C. 841(a) (1) and (b)(1)(8). Respondent alleges that the guilty plea to the federal charges is equivalent to a conviction of N.J.S.A. 24:21-19(a)(1).

2. Whether petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of Section 89b(2) of the Casino Control Act, as incorporated in Section 90 of the Act, based upon allegations that (a) petitioner pled guilty to a charge of a violation of N.J.S.A. 2C:20-11 as the result of an arrest on April 20, 1981; and (b) that petitioner pled guilty to a charge of a violation of N.J.S.A. 2C:21-5 as the result of an arrest which occurred on May 18, 1981; and (c) that petitioner pled guilty to a violation of N.J.S.A. 24:21-51, as a result of an arrest on September 6, 1981.

3. Whether the petitioner can affirmatively demonstrate his rehabilitation pursuant to Section 90h of the Casino Control Act.

This matter was originally scheduled for hearing for July 10, 1984, but was adjourned at the request of petitioner whose witnesses were unavailable on that date. A hearing was held on August 21, 1984 at the Haddonfield Borough Municipal Building, Haddonfield, New Jersey.

FINDINGS OF FACT

The following relevant facts were undisputed:

Petitioner applied for a casino employee license to work as a craps dealer. The Division of Gaming Enforcement objected to petitioner's licensure, citing the following arrest and conviction record:

1. On April 20, 1981, petitioner was arrested at a K-Mart in Brooklawn, New Jersey, on charges of shoplifting one pair of men's socks valued at $1.17 in violation of N.J.S.A. 2C:2C-11 (R-1). Petitioner admitted that he took the socks, was adjudicated guilty and fined $100.

2. On May 18, 1981, petitioner was arrested on two counts of passing bad checks, in violation of N.J.S.A. 2C:21-5 (R-2). Petitioner pled guilty and was fined $50 on each count.

3. On September 6, 1981 petitioner was arrested by the Bellmawr Police Department and charged with possession of a hypodermic needle and syringe (discovered when petitioner was arrested for a hit and run accident) in violation of N.J.S.A. 24:21-51 (R-3). Petitioner was found guilty and fined $100 and $25 court costs.

4. On May 13, 1983, petitioner pled guilty in the United States District Court for the District of New Jersey, to conspiracy to distribute methamphetamine. The guilty plea resulted from a six count indictment arrising out of an incident occurring during the month of December 1982. Counts two through six were dismissed and respondent's sentence was suspended. He was placed on four years supervised probation, pursuant to 18 U.S.C. 4216. A special condition of probation required petitioner to enter and successfully complete an out-patient drug and alcohol treatment program as deemed necessary by the Probation Department (R-5).

Petitioner is 26 years old. He used drugs on a casual basis during his high school years. When he began having marital problems in 1979 and 1980, his use of drugs escalated to the point of addiction. In approximately May 1981, petitioner realized he had a serious drug problem, referring to himself as a "stone junkie." At that time, he stopped injecting drugs and made a serious attempt to alleviate his drug problem. During 1981, he had a "few slips over the summer." In May 1982, petitioner began to attend Alcoholic's Anonymous (A.A.) and Narcotic's Anonymous (N.A.) meetings. Notwithstanding a few minor setbacks when he intermittently used drugs, he was quite successful at remaining drug-free.

During November 1982, when petitioner was 24 years old, he was working as a bar porter at the Club Ancopa in Atlantic City, New Jersey. While at work, he was approached by a man (who unbeknownst to petitioner, was a drug enforcement agent) who told petitioner he wanted to buy methamphetamine in large quantities. During the month of November until December 2, 1982, the agent approached petitioner approximately six times at the Club Ancopa and at petitioner's apartment with inquiries as to where he could purchase the drugs. During this time, petitioner was avoiding the use of drugs and was still attending A.A. and N.A. meetings. When contacted by the agent, petitioner on several occasions told him that he had not been using methamphetamines for at least three or four months, that he was attending A.A. meetings, that if he was exposed to the drug it would destroy him, and further, that he could not help the agent purchase drugs. On at least one occasion the agent offered petitioner approximately $1000 for an ounce of methamphetamine. Petitioner refused the offer notwithstanding that he had just been laid off from his job and could use the money. When the agent asked petitioner if he wanted to get "high", petitioner responded negatively.

On approximately December 2, 1982, after having been contacted and pressured by the DEA agent regarding the purchase of drugs and offers to get petitioner "high," petitioner decided that he had to get the DEA agent out of his life. He agreed to introduce the agent to William Bosher who petitioner thought could sell drugs to the agent. Petitioner credibly testified that he was set up by one Scott Brady who was having his own legal problems. Petitioner felt that Brady perceived he could work a "better deal" for himself by providing the drug enforcement agent with the names of persons who might be involved with illegal drug activity. Petitioner proceeded to accompany the agent to Bellmawr, New Jersey and introduce him to Bosher. Petitioner did not sell or purchase any drugs nor did he accept any money for the introduction of the agent to William Bosher. Petitioner had no further contact with the agent after he introduced him to Bosher.

Shortly before Christmas 1982, having lost his job and his apartment, petitioner decided to attend craps school, which he entered in January 1983. He also applied for a casino employee license.

On February 8, 1983, petitioner was indicted with five other persons, in a six count indictment by the Federal Grand Jury on Federal drug charges (R-5). The indictment was handed down after respondent had completed his casino employee license application and prior to his completion of craps school. Petitioner completed craps school, finishing second in his class.

Petitioner was arraigned and a lawyer was appointed to represent him. Petitioner and his attorney discussed the evidence which revealed that the DEA agent had been wired for sound when petitioner introduced him to Bosher, during which time photographs were also taken. Petitioner also believes that a wire tap recorded a telephone conversation between him and the DEA agent. Petitioner did not deny that he introduced the agent to Bosher. However, petitioner's matter was disposed of the United States District Court pursuant to the Youthful Offender's Act. After pleading guilty to one count of conspiracy to distribute methamphetamine, petitioner was sentenced (R-5).

After petitioner lost his apartment in December 1983, he returned to his mother's home in Bellmawr, New Jersey. Prior to the incident, he voluntarily enrolled himself in a drug free out-patient drug/alcohol rehabilitation program in Woodbury, New Jersey, known as SODAT. As part of the SODAT program, petitioner underwent urine monitoring by giving three urine specimens a week. After he pled guilty to the drug conspiracy charges, an additional monthly urine specimen was required by the Federal Probation Office which permitted petitioner to continue his rehabilitation at SODAT.

In May 1983, petitioner moved back to the New Jersey shore to work for a contractor. He enrolled in Ocean Resources, a drug counselling and urine monitoring program in Ocean City, New Jersey. During this time he resided with a girlfriend, but separated from her in November 1983, after the girlfriend was hospitalized for anorexia. When petitioner realized that both he and his girlfriend needed counselling, he felt that it would be best for them to separate. Petitioner then returned to his parents' home in Bellmawr, New Jersey, and reentered the SODAT program.

At the hearing, petitioner volunteered the information that in November 1983, he was stopped while driving in Margate, New Jersey, for a tail light being out and for "weaving". Petitioner had had a few beers at a Monday night football game. He was given a breathalyzer test resulting in a .07 reading. Petitioner's driver's license was

suspended for six months at a municipal court proceeding on February 6, 1984. As a result of the drunk driving conviction and because he missed a few SODAT appointments, petitioner was determined to have violated his probation and was placed in a Camden, New Jersey halfway house release program known as Volunteers of America. From April 2 until August 2, 1984, petitioner underwent counselling with Jeffrey A. Clayton who was the Executive Director/Staff Psychologist for SODAT and was also affiliated with the halfway house. Petitioner remained under the close supervision of Mr. Clayton and another counsellor at the halfway house. Petitioner's probation officer who was extremely strict required that petitioner be totally restricted during his residency at the halfway house. He was only permitted to leave the halfway house between 7:00 in the morning and 6:30 at night. Ultimately for the last four weeks of his confinement, he was given weekend passes.

Petitioner has continued to attend A.A. meetings, not due to an alcohol problem, but because he feels that the A.A. program is more effective than the N.A. Program. Petitioner feels that the A.A. 12-step program is effective for him as a recovering drug addict. Petitioner began to feel uncomfortable at the N.A. meetings because many of the persons attending the program would ". . .nod out because they were still on the Methadone program from heroin. . ." and this made petitioner uncomfortable. Petitioner very rarely drinks alcohol.

Petitioner is still involved in SODAT and has no present intention of leaving the program. He is not sure how long his attendance at SODAT may be mandatory through the Federal Probation Office, but he feels that he will probably continue to attend the program after it is no longer required. Petitioner is still undergoing urine monitoring through SODAT.

Petitioner's confinement at the halfway house made a substantial impression upon him in that he was exposed to hardened criminals. Petitioner is adamant that he never wants to be involved with a federal prison system. At the hearing petitioner stated ". . . I never realized that there were people who had no morals whatsoever. They have no guilt factor. They just do crime and it doesn't bother them at all. I could never be that way. My whole thing with drugs, I abused drugs and almost everything that happened to me was related to drugs. . ."

Petitioner's present participation at SODAT is a weekly one-hour session with Mr. Clayton, who is also available to petitioner any time during the week (night or day) if petitioner needed his help. Petitioner feels that the one to one counselling with Mr. Clayton has been extremely effective and has substantially helped him in his rehabilitation.

Having had the opportunity to closely observe petitioner's demeanor and attitude at the hearing, I found his testimony to be credible, forthright and impressive. Petitioner stated the following:

> The drug problem is well under control now. I don't consider myself, I am not a drug abuser at this point in time. All the crimes that I have been involved in are directly drug related. None of them were done out of being a criminal or anything. It was just a matter of irresponsibility and the situation I was in with drugs at the time they happened. The irresponsibility coming from the abuse of drugs.
>
> I don't have no long juvenile record or anything like that. I was picked up by police for throwing eggs at a car like other kids but nothing serious. I don't have a history of being a criminal. As you can tell by the dates on here, all of them happened during the time that the drug problem was the worst.
>
> Another thing I would like to add, if I should be granted the license and go into the casinos, I am absolutely going to keep up counselling because I do understand the drugs that exist in the casinos are very,very - - I saw that when I was into drugs, and I can see that now and that's a shame, but I feel as though I am one step, I would be one step in front of a lot of other people going in the casinos because I have already learned my lesson. I know better than to play around with them, where as other people coming into the casinos, where they might be introduced to it there and run into a problem. But I know to stay away from it all too well.

Petitioner fully accepts responsibility for the incident for which he was arrested on September 6, 1981, stating that the hit and run accident was due to a lack of responsibility at that time from being high on drugs.

Regarding the shoplifting charge, petitioner admits that he was high on drugs at the time the incident took place. He had purchased in excess of $75 worth of clothing at K-Mart, but due to his irrational state of mind he stole a pair of socks.

Petitioner gave the following explanation of the circumstances resulting in his conviction of N.J.S.A. 2C:21-5. Petitioner was owed money by Philip Parsons and Tom Watson who worked for a company called Current Systems, Ltd. Watson and Parsons drew checks from the payroll account at Current Systems, endorsed the checks to petitioner, who cashed them at a bank where he maintained an account. Two checks were involved, one made out to Philip Parsons and one made out to Thomas Watson. The total amount of the checks was slightly in excess of $300. Approximately two weeks after petitioner cashed the checks, the Brooklawn Police came to his mother's house and notified her that two bad checks bearing petitioner's endorsement had been passed. Petitioner went to the Bank where the checks were cashed and was informed that he would have to make restitution regardless of what the circumstances were. On the spot, petitioner made a $25 payment. Petitioner then offered to pay off the rest of the balance as soon as he got paid from his job. He then went to the Bellmawr Police Department and filed a complaint against Watson and Parsons. Approximately one week later, Watson, Parsons and the individual who owned Current Systems, were arrested for passing bad checks. Petitioner ultimately withdrew his complaint against Watson and Parsons after being contacted by Mrs. Watson. When petitioner went to court on the bad check charges, he explained the entire incident to the judge, who told him that because his signature was the last signature on the checks, he would have to make restitution. Petitioner was fined $100. He has made full restitution to the bank.

Jeffery Allan Clayton, the Director and Staff Psychologist for SODAT reviews all cases coming into the program, and supervises the program's counsellors. Mr. Clayton is familiar with petitioner's involvement at SODAT. Mr. Clayton also monitors the Federal Probation Program for probationers and parolees who participate in SODAT. He had been employed by SODAT for 15 years and holds a Master's Degree in psychology. Mr. Clayton is the formal clinical supervisor of the Volunteers of America Halfway House where he serves as the prime drug counsellor.

Mr. Clayton's first contact with petitioner was on April 30, 1983. He has been impressed with petitioner's ability and desire to remain drug free. He stated that petitioner's prior behavior and criminal activity are typical of persons who are heavily addicted to methamphetamine. Early in the therapy process petitioner seemed to have some problems accepting responsibility which was evidenced by missing some appointments (which Mr. Clayton pointed out is not unusual for people who are just

emerging from a long-term addiction). However, petitioner has gradually become more responsible in taking control of his life. Petitioner's confinement at the halfway house was under very adverse conditions where he was subjected to contact with hard core criminals including murderers and bank robbers. Petitioner's very successful participation in the halfway house program by maintaining his motivation indicates the permanency of his behavioral changes. Mr. Clayton feels that petitioner's behavioral changes are not merely cosmetic. Petitioner has taken substantial steps to insure his recovery, and has also proceeded to come to grips with other aspects of his life such as sexual and family relationships. All of petitioner's urine tests have come out negative with the exception of one which came back positive for marijuana, but which was totally inconsistent with the other urine tests which Mr. Clayton stated ". . .I felt as though it was kind of funny because with marijuana it stays in your system 7 to 21 days and it was taken at the end of the week and it was the only urine to turn up with a positive reaction." When petitioner first entered the SODAT program he exhibited the symptoms of many persons just coming off drugs, such as hyperactivity, detachment to emotion, and irresponsible behavior. Since the participation in the program he has become more relaxed and more in control and aware of his emotions. Another important aspect of his recovery process is the fact that he has developed the skills of analyzing his problems, identifying his problems, and coming up with responsible alternatives and solutions to the problems. Mr. Clayton has found petitioner's desire and ability to remain free of methamphetamine exceptional in comparison to most other people who have entered this kind of program in an attempt to free themselves of methamphetamine addiction. Mr. Clayton feels that petitioner will rise to the challenge of being a dealer in that petitioner ". . .seems to be a person that grows with that challenge."

Also testifying at the hearing were Ann Verrecchio (petitioner's mother), Thomas Verrecchio (petitioner's brother) and J. Slawson (a friend of petitioner's for 15 years). All three witnesses confirmed the serious drug problem that petitioner had experienced, and each was able to testify that petitioner is presently doing very well. Both Thomas Verrecchio and Mr. Slawson had experienced a falling out with petitioner during his drug addiction, but both have renewed their relationships with him as he has undergone his recovery.

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-90e provides that the Casino Control Commission (Commission) shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in Section 86 of the Casino Control Act. N.J.S.A. 5:12-86c(3) states that, absent rehabilitation as defined by N.J.S.A. 5:12-90h, the Commission shall deny a license to an applicant who is disqualified on the basis of a conviction of any offense in any jurisdiction which would be under New Jersey law at the time of application a high misdemeanor under section 19 of P.L. 1970, c. 226(C. 24:21-19). It is undisputed that petitioner was convicted of the federal offense of conspiracy to distribute methamphetamine which is the statutory equivalent of N.J.S.A. 24:21-19(a)(1).

Notwithstanding petitioner's conviction of a statutory disqualifying offense, he must be afforded the opportunity to demonstrate his rehabilitation pursuant to Section 90h of the Casino Control Act which provides that in determining whether an applicant has affirmatively demonstrated his rehabilitation, the Commission shall consider the following factors:

1. The nature and duties of the position applied for;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense;

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in

correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

Petitioner was 24 years old at the time that he committed the federal drug offense. I do not find that petitioner's age in any way mitigates the circumstances of the offense.

The position of craps dealer for which petitioner seeks a license, is one requiring responsibility and integrity. While the crime of consipiracy to distribute methamphetamine is in and of itself a serious offense, and one which can result in substantial fines and prison sentences, petitioner received a suspended sentence and four year's probation. Further, the drug conspiracy charge to which petitioner pled guilty was his first and only offense of that kind, i.e., an isolated incident. He has not been arrested or convicted of any criminal offenses since December 1982. The circumstances under which the offense occurred are significant. It is undisputed that petitioner attempted to engage in a course of drug rehabilitation prior to the DEG agent approaching him in November 1982. He was pursued and pressured by the agent during a period when he was attempting to rid himself of a serious drug problem. He resisted the agent's offers of money as well as drugs, during a time when he was extremely vulnerable. In an attempt to alleviate the pressure placed upon him, petitioner introduced the DEA agent to an individual who he thought could sell him large quantities of methamphetamine. While petitioner's actions can in no way be condoned, it is significant that he did not purchase or sell any drugs. He resisted major temptations during a difficult time. He does not deny or excuse his involvement in the unfortunate incident. After the offense, but before the indictment, petitioner voluntarily enrolled himself in SODAT in an effort to continue his recovery from his drug addiction. Since the offense, he has successfully completed craps school and has maintained employment. Petitioner's testimony, as well as that of his witnesses, is undisputed that he acknowledged and recognized his serious drug problem, and he personally took the initiative in an attempt to put his life back together. The testimony of Jeffery Clayton, petitioner's counsellor (which is also corroborated by P-1) was impressive with regard to petitioner's motivation and efforts in attempting to rehabilitate himself. Petitioner's survival of the restrictive halfway house program is further evidence of personal improvement and rehabilitation. Mr. Clayton's testimony was undisputed that several other persons came into the program under the same conditions as petitioner, but none of them were able to survive the confinement of the program.

Respondent argued that the federal offense occurred recently and that additional time is needed to adequately assess petitioner's rehabilitation. In determining whether an individual has rehabilitated himself, there is no defined minimal period of time which must pass before a positive determination of rehabilitation can be made. Petitioner's federal offense occurred in December 1982. At the time of the hearing, approximately 19 months had passed since the date of the offense. The passage of time subsequent to an offense is merely one factor to be considered.

I perceived petitioner to be sincere in discussing his rehabilitation, however, there was substantial evidence beyond his own statements to support his rehabilitation, namely, Mr. Clayton's testimony and corroborating letter (P-1) as well as the testimony of petitioner's mother, brother and Mr. Slawson. Petitioner's successful participation in the various counselling programs, including the urine monitoring, speaks for itself.

For all of the foregoing reasons, I **CONCLUDE** that petitioner has satisfactorily rehabilitated himself. That conclusion is based not only upon the factual findings, but also after having had the opportunity to observe petitioner's demeanor and attitude at the hearing wherein be discussed his personal struggle openly, honestly and sincerely. His testimony was neither evasive nor self-serving. His responses to cross-examination as well as to my questioning, were forthright.

N.J.S.A. 5:12-89b(2) as incorporated in Section 90, requires an applicant for a casino employee license to produce such information, documentation and assurances as may be required to establish by clear and convincing evidence his reputation for good character, honesty and integrity. The issue arises as to whether petitioner's guilty pleas to violations of N.J.S.A. 2C:20-11b, 2C:21-5 and 24:21-51, (all during 1981) impair his reputation for good character, honesty and integrity. In considering whether petitioner has demonstrated good character, honesty and integrity I have also considered his conviction of conspiracy to distribute methamphetamine. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 1979) discussed the concept of reputation for good character, honesty and integrity. It was noted at page 9, that ". . .reputation is relevant to raise questions which the applicant is obliged to answer; but the real issue is the applicant's actual character, with special attention being given to the subject matter of the reputation." In the present case, there is nothing presented to suggest that petitioner has

an adverse reputation, but rather, the issue is his actual good character, honesty and integrity. The discussion in this decision leading to the conclusion that petitioner has demonstrated his rehabilitation, is clearly relevant to the question of his good character, honesty and integrity. With regard to the three New Jersey criminal convictions, petitioner credibly testified that they all occurred during a time when he was admittedly addicted to drugs. While the conviction for passing bad checks did not appear to be directly related to his drug problem, petitioner's involvement in that offense did not appear to be of a malicious or deliberate nature. Furthermore, petitioner has openly admitted his guilt with regard to all three offenses, and does not excuse his behavior or attempt to rationalize it. What is significant is petitioner's present character, honesty and integrity. I **CONCLUDE** that petitioner's rehabilitation, including his open acknowledgement and admission of criminal wrong doing and drug addiction, and his very strong desire to continue to remain free of drugs and crime, when coupled with the fact that he has had no criminal violations since December 1982, constitutes clear and convincing evidence of his good character, honesty and integrity.

ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner be granted a casino employee license permitting him to work as a craps dealer.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 5, 1984
DATE

Valerie H. Armstrong
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

10/5/84
DATE

Mary Ann E. Borczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 10 1984
DATE

Ronald L. Tarkenpkl
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Two page letter from Jeffery Clayton, dated August 10, 1984

R-1 Two page arrest report from Brooklawn Police Department, dated April 20, 1981

R-2 One page arrest report from Brooklawn Police Department, dated May 18, 1981

R-3 Operations Report, New Jersey Police Accident Report, Arrest Report, Complaint relating to incident of September 6, 1981 (8 pages)

R-4 Statement from Court Clerk for the Borough of Bellmawr, New Jersey, dated November 7, 1983

R-5 Indictment, United States District Court,, District of New Jersey and Judgment and Probation/Commitment Order, dated May 13, 1983 (7 pages)

LIST OF WITNESSES

FOR PETITIONER:

Joseph Verrecchio
Jeffery Allan Clayton
Theodore J. Slawson
Mrs. Ann Verrecchio
Thomas Verrecchio

FOR RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-EA-203
OAL DOCKET NO. 264-84
APP. NO. 43875-21

APPLICATION OF OLGA WATTS

FOR A CASINO EMPLOYEE LICENSE

AMENDED
FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of the initial decision by the Office of Administrative Law filed on June 14, 1984, recommending that the application of Olga Watts for a casino employee license be denied; and no exceptions or objections having been filed thereto; and Olga Watts having registered as a casino hotel employee on June 16, 1984, prior to final action on the initial decision by the Commission; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting on July 25, 1984, to modify the said initial decision and to deny the application; and a final order dated December 27, 1984, having been issued inadvertently prohibiting Olga Watts from obtaining any registration;

IT IS on this 20th day of FEBRUARY 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. While the Administrative Law Judge concludes that the petitioner has committed an offense which would indicate that her licensure would be inimical to the policies of the Casino Control Act and to casino operations, he fails to characterize which of petitioner's offenses is inimical. The Commission finds that the petitioner engaged in conduct on July 26, 1981, constituting the offenses of theft by deception, contrary to N.J.S.A. 2C:20-4 and forgery, contrary to N.J.S.A. 2C:21-1 and unlawful use of a credit card, contrary to N.J.S.A. 2C:21-6, each of which constitutes an offense which renders her continued licensure inimical to the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

2. While the record is silent on the issue of rehabilitation, the Commission finds that based upon the entire record that the respondent has failed to demonstrate her rehabilitation from the disqualifying offenses set forth above.

IT IS FURTHER ORDERED that the application of Olga Watts for a casino employee license be and hereby is denied based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Olga Watts is prohibited from reapplying for or obtaining any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that this denial shall not affect the applicant's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91; and

IT IS FURTHER ORDERED that this final order suspersedes the final order in this matter dated December 27, 1984; and

IT IS FURTHER ORDERED that copies of the final order by served upon Olga Watts, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 264-84

AGENCY DKT. NO. 83-EA-203

OLGA WATTS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Paul J. Gallagher, Esq., for petitioner (Michael M. Land, attorney)

Anthony V. D'Elia, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 30, 1984 Decided: June 14, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Olga Watts to the Casino Control Commission for a casino employee license permitting her to work in a casino as a craps dealer. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the petitioner has established, by clear and convincing evidence, her reputation for good character, honesty and integrity, within the

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meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90 of the act.

2. Whether the petitioner has established, by clear and convincing evidence, her financial stability, integrity and responsibility, within the meaning of sections 89b(1) and 90 of the act.

3. Whether the petitioner, with specific reference to her record of arrests, has committed an offense which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(4) and 86g of the act.

PROCEDURAL HISTORY

By letter report to the Casino Control Commission, dated November 22, 1983, the Division of Gaming Enforcement interposed its objections to the licensure of the petitioner. By letter dated December 29, 1983, the petitioner requested a hearing on her license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on January 12, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 30-year-old resident of Atlantic City, New Jersey. She was awarded a Bachelor of Fine Arts Degree in Illustration by the Philadelphia College of Art in June 1976. It is undisputed that the petitioner successfully completed a 240-hour craps dealer course at Casino Schools, Inc., in February 1983.

Since April 1984, the petitioner has been employed as a cashier and preparation person at a pasta store in the Ocean I Mall in Atlantic City. She also receives additional income by doing free-lance art work. Since 1975, the petitioner has received income from seasonal work as a portrait artist on the boardwalk.

The Division of Gaming Enforcement has questioned the financial stability, integrity and responsibility of the petitioner, as a result of her delinquency on repayment of a loan from the Pennsylvania Higher Education Authority. According to the petitioner, she and her father had cosigned on a student loan which permitted her to continue to attend the Philadelphia College of Fine Arts. It was her understanding that her father would repay the loan and her first knowledge that the account was delinquent occurred when the situation was described in the Division's letter of objection, dated November 22, 1983. Since that time, the petitioner has repayed $150 on the outstanding balance and she has agreed to pay $100 per month (Exhibits P-2 and P-3).

The Division of Gaming Enforcement has also questioned the petitioner's suitability for licensure because of two incidents which led to the petitioner's arrest. The petitioner's first arrest occurred on April 12, 1980, when she was charged by the Atlantic City Police Department with a threat to kill, contrary to N.J.S.A. 2C:12-3 and possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4. The petitioner explained that this arrest followed an incident involving a tenant to whom she had recently rented an apartment which she owned. According to the petitioner, the tenant and a companion had started an electrical fire in the apartment which caused her significant concern. She approached the tenant, returned the rent money, and asked the tenant and his companion to leave the premises. An argument ensued and the petitioner then fired a pistol once or twice into the ceiling of the apartment.

It was the testimony of the petitioner that she felt the tenant was jeopardizing the apartment and that she didn't feel she was doing anything wrong. In fact, it was the testimony of the petitioner that she thought she was being practical.

It is undisputed that the charges against the petitioner were subsequently dismissed at the request of the prosecutor. According to the petitioner, she had a permit for her weapon, which was seized by the police, and she would like to petition for its return.

On July 26, 1981, the petitioner was arrested by the Division of Gaming Enforcement and charged with theft by deception, contrary to N.J.S.A. 2C:20-4; forgery, contrary to N.J.S.A. 2C:21-1; and unlawful use of a credit card, contrary to N.J.S.A. 2C:21-6. In addition, the Sands Casino Hotel Security Department was a complainant against the petitioner for criminal attempt, contrary to N.J.S.A. 2C:5-1. This arrest of

the petitioner followed her use and attempted use of a credit card, which did not belong to her, at two licensed casino hotels. Explaining the incident, the petitioner testified that she met a man named "Ritchie" on the boardwalk near the Golden Nugget Casino. According to the petitioner, "Ritchie" said that he had a credit card which was issued in a woman's name and he asked if the petitioner would agree to sign for a purchase using the card. The petitioner then purchased something for "Ritchie" and a gold-plated necklace for herself at the Golden Nugget Casino Gift Shop, using the credit card. According to the petitioner, "Ritchie" left to use the bathroom and never returned. Later the same day, the petitioner attempted to purchase sunglasses and chewing gum at the gift shop in the Sands Casino Hotel, but security personnel were summoned and the petitioner was subsequently arrested.

It is undisputed that the petitioner was subsequently indicted on the aforementioned charges. It is also undisputed that the petitioner was admitted to and successfully completed the Atlantic County Pretrial Intervention Program and the criminal charges against her were dismissed. When asked to explain her conduct, the petitioner testified that she was naive, having never owned a credit card, and that she had no knowledge that there was anything wrong with the card. Testifying on behalf of the Division of Gaming Enforcement, Investigator Thomas Seidler stated that he had been summoned to the Sands Casino Hotel, where he arrested the petitioner for her attempted use of a stolen credit card. According to Investigator Seidler, the petitioner's testimony at the hearing concerning the incident conformed with her explanation on the day of her arrest.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to sections 89 and 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity, as well as his financial stability, integrity and responsibility. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be

inimical to the policy of the act and to casino operations. Pursuant to section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

To determine whether the commision of an offense would render an applicant's licensure inimical to the policies of the act requires consideration of several factors. The Casino Control Commission set forth in its opinion In the Matter of the Application of Resorts International, Inc. for a Casino License, 79-CI-1 (February 26, 1979) at page 15, the criteria to be applied when such a determination is to be made:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the act or to gaming, it would . . . encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business or financial arrangements incidental to gaming operations.

The petitioner's first arrest occurred in April 1980, and it concerned her use of a firearm to attempt to resolve a dispute with her tenant. This conduct, which the petitioner curiously described as "practical," did not result in a conviction.

The petitioner's other arrest occurred in July 1981, when she used and attempted to use a credit card, which did not belong to her, to make purchases at two casino hotel gift shops. Because of her satisfactory completion of the Atlantic County Pretrial Intervention Program, the charges against her resulting from this offense were dismissed. The petitioner has no other arrests. However, only slightly more than two years have passed since her completion of the Pretrial Intervention Program and the dismissal of the charges arising from her use of the stolen credit card.

The petitioner's use of a firearm to attempt to resolve a dispute with her tenant appears to be a lapse in good judgment which the petitioner, as yet, does not fully understand. Her use of a credit card belonging to another, under the undisputed circumstances, was an attempt by the petitioner to "get something for nothing." Even if

she had no experience with credit cards, she knew that the card which she was using was not hers and that she would be obtaining merchandise at someone else's expense. Such conduct is evidence of dishonesty, which has occurred in the relatively recent past. In addition, it is significant that this dishonest conduct occurred on the premises of and involved two licensed casinos.

Based upon the foregoing discussion and specific findings of fact, I **CONCLUDE** that the petitioner has committed an offense which, when viewed in the light of all the circumstances, is of such a nature as to justifiably undermine public confidence in the integrity of the legalized gaming industry. Therefore, I further **CONCLUDE** that the petitioner has committed an offense which would indicate that her licensure would be inimical to the policy of the Casino Control Act and to casino operations. I further **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, that she possesses the requisite good character, honesty and integrity for licensure, within the meaning of sections 89b(2) and 90 of the Casino Control Act.

The final issue to be addressed concerns the petitioner's delinquent account with the Pennsylvania Higher Education Authority. The petitioner has begun to repay this loan, following her becoming aware that it was in arrears. She has also made arrangements to continue to repay the loan on a regular basis. Accordingly, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her financial stability, integrity and responsibility. However, having concluded that the petitioner has committed an offense which would indicate that her licensure would be inimical to the policy of the Casino Control Act and to casino operations, and having concluded that the petitioner has failed to establish her good character, honesty and integrity, I must further **CONCLUDE** that the petitioner's application for licensure should be **DENIED.**

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the petitioner, Olga Watts, for a casino employee license, permitting her to work in a casino as a craps dealer, be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 14, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

14 JUN 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 18 1984
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ml

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Letter, dated March 2, 1984

P-2 Copy of a check, dated March 31, 1984

P-3 Copy of a money order

FOR THE RESPONDENT:

R-1 Personal History Disclosure Form

WITNESSES

FOR THE PETITIONER:

Olga Watts

FOR THE RESPONDENT:

Thomas Seidler

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
REGISTRATION NO. 18486-40
APPLICATION NO. 45769-21
AGENCY DOCKET NOS. 84-285 AND
84-EA-103
OAL DOCKET NOS. CCC 7358-84 AND
CCC 5568-84 (CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

DEBORAH WHEALTON,

Respondent.

AND

IN THE MATTER OF THE APPLICATION
OF DEBORAH WHEALTON FOR A
CASINO EMPLOYEE LICENSE

FINAL ORDER

These matters having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on October 24, 1985, recommending denial of the casino employee license application and revocation of the casino hotel employee registration of Deborah Whealton; and the respondent having filed exceptions to the initial decision on February 15, 1985; and the Division of Gaming Enforcement having filed a reply thereto on February 21, 1985; and the Commission, after considering the entire record of these proceedings, having

resolved at its public meeting of March 6, 1985, to modify the initial decision, deny the application of Deborah Whealton for licensure as a casino employee and revoke her casino hotel employee registration,

IT IS on this 27th day of March 1985, ORDERED that the initial decision of the Office of Administrative Law be and hereby is modified as follows:

1. Deborah Whealton is disqualified from licensure as a casino employee and registration as a casino hotel employee for committing the offenses of theft, contrary to N.J.S.A. 2C:20-3, and forgery, contrary to N.J.S.A. 2C:21-1(a)(1), in June 1981 during the course of her employment as a room attendant at the Playboy Hotel and Casino. N.J.S.A. 5:12-86(c)(4), -86(g), -90(b) and 91(b).

2. Deborah Whealton has failed to establish her good character, honesty and integrity by clear and convincing evidence as required of a casino employee due to both her criminal conduct and her efforts to conceal the nature and circumstances of the offenses from the Division of Gaming Enforcement during a telephone interview conducted on May 8, 1984. N.J.S.A. 5:12-89(b)(2) and -90(b).

IT IS FURTHER ORDERED that the application of Deborah Whealton for a casino employee license be and hereby is denied and her casino hotel employee registration be and hereby is revoked based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Deborah Whealton is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8: and

IT IS FURTHER ORDERED that copies of this final order be served upon Deborah Whealton, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
(CONSOLIDATION)
OAL DKT. NOS. CCC 7353-84
and CCC 5568-84
AGENCY DKT. NOS. 84-285 and
84-EA-103

DEBORAH WHEALTON,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Abigail Sayegh, Esq., for petitioner (Goldenberg, Mackler & Sayegh, attorneys)

Frances Sundheim, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 30, 1984 Decided: January 23, 1985

BEFORE **NORMAN D. SMITH,** ALJ: c/b

The Division of Gaming Enforcement objected to the petitioner's application for licensure as casino employee and further seeks to revoke the petitioner's casino hotel employee registration, based upon the petitioner's arrest and conviction record. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case in accordance with N.J.S.A. 52:14F-1 et seq.

Between March 16, 1981 and July 20, 1981, Deborah Whealton was employed on the housekeeping staff at the Playboy Hotel and Casino. Sometime between those dates and during that employment, she was cleaning a hotel guest's room and stole from the room, a ladies' watch with a value of $300, two gold necklaces with a value of $200,

and a check which she later filled out, forging the check owner's name. She was arrested on July 21, 1981, and diverted from the criminal justice system through the Pretrial Intervention Program.

Having heard testimony and considered the letters of recommendation that she presented into evidence, I **CONCLUDE** that Deborah Whealton lacks the good character, honesty and integrity required by the statute. I further **CONCLUDE** that her licensure would be inimical to the casino industry and the purposes of the casino control act.

Therefore, for the foregoing reasons, the application of Deborah Whealton for a casino employee license is **DENIED,** and the casino employee hotel registration of Deborah Whealton is hereby **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 22, 1985
DATE

Ronald C. Packman Jr.
NORMAN D. SMITH, ALJ c/b

Receipt Acknowledged:

January 24, 1985
DATE

Paula Wurm
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 28 1985
DATE

Ronald D. Parker/ph
OFFICE OF ADMINISTRATIVE LAW

bc

952

WITNESSES

Deborah Whealton

EXHIBITS

P-1 Letter from supervisor
P-2 Work evaluation
P-3 Character reference, Helen Jones

R-1 Photocopy of cancelled check
R-2 Statement of Deborah Whealton
R-2b Typed statement of Deborah Whealton
R-3 Complaint
R-4 Complaint

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-208
OAL DOCKET NO. CCC 5393-83
APP. NO. 446-11

STATE OF NEW JERSEY,
DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

CAROL A. WHITE,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on November 5, 1984, finding that on two occasions in 1981 Carol A. White violated N.J.S.A. 5:12-100(o)(1) by accepting gifts from patrons while she was licensed as a casino key employee and employed as the credit manager of the former Playboy Hotel/Casino; and the Administrative Law Judge having recommended against the imposition of any penalty for these violations noting that the respondent has suffered severe consequences as a result of her violations, namely, nearly two years of unemployment in the gaming industry, expense of litigation and damage to her reputation; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision with the Commission on December 5, 1984; and Carol A. White having filed a reply thereto with the Commission on December 27, 1984; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of January 9, 1985, to modify the Initial Decision as to penalty only;

IT IS on this 28th day of FEBRUARY 1985, ORDERED that the Initial Decision be and hereby is modified as

follows:

(1) Pursuant to N.J.S.A. 5:12-129 and 130, Carol A. White is assesed a civil penalty of $500 for accepting perfume from a gaming patron in July 1981, while she was licensed as a casino key employee and employed as a credit manager in violation of N.J.S.A. 5:12-100(o)(1). $450 of the penalty is waived in recognition of the mitigating factors cited by the Administrative Law Judge.

(2) Pursuant to N.J.S.A. 5:12-129 and 130, Carol A. White is assessed a civil penalty of $500 for accepting a gift certificate from gaming patrons in December 1981, while she was licensed as a casino key employee and employed as a credit manager in violation of N.J.S.A. 5:12-100(o)(1). $450 of the penalty is waived in recognition of the mitigating factors cited by the Administrative Law Judge.

IT IS FURTHER ORDERED that a total civil penalty of $100 be and hereby is imposed upon Carole A. White for two violations of N.J.S.A. 5:12-100(o)(1) based upon the reasons set forth in the Initial Decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Carol A. White pay a total civil penalty of $100, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that copies of this final order be served upon Carol A. White and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5393-83

AGENCY DKT. NO. 83-208

STATE OF NEW JERSEY,
DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
CAROL A. WHITE,
Respondent.

John J. Sheehy, Deputy Attorney General, on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

David C. Becker, Esq., on behalf of respondent

Record Closed: September 21, 1984 Decided: November 2, 1984

BEFORE **SOLOMON A. METZGER**, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking the revocation of respondent's casino key employee license pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Respondent was employed as the credit manager at the former Playboy Hotel and Casino. She was hired in June 1980 prior to opening, to set up the credit department, and she then supervised its operation from opening day in April 1981 until March 1982.

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Petitioner's complaint concerns itself with her performance during this latter eleven-month period. It contains three counts. Count I alleges that respondent received four separate gifts from casino patrons in violation of N.J.S.A. 5:12-100(o)(1), which prohibits the acceptance of any "tip or gratuity" by a casino key employee. Count II alleges that in taking a certain trip to Venezuela to collect on a gambling debt owed Playboy, respondent violated N.J.A.C. 19:45-1.29(b), which prohibits persons outside of the collection department from engaging in collection efforts. Count III alleges that respondent's performance as a credit manager was so poor as to establish that she lacks business ability, a prerequisite for a key employee license, N.J.S.A. 5:12-89(b)(3).

COUNT I - GIFTS

a. The gold pen

Barbara Prinz testified on petitioner's behalf with respect to this incident. She was a pit clerk supervisor at Playboy and knew a patron by the name of Ibraham Awadallah. He had offered her gifts on numerous occasions, all of which she refused. Sometime in spring 1981 she was in the clerk's cage when Mr. Awadallah approached and after some conversation offered her a gold pen. She refused. Respondent then came up to the window and Mr. Awadallah stated that if Ms. Prinz would not accept the pen, he would give it to "this pretty young lady here." Respondent then took the pen and was writing with it as she left the casino cage.

Ms. Prinz relayed the incident to Sharon Matthews, a supervisor of internal audit, who noted it in a memorandum in which she described the alleged acceptance of a gold pin. Ms. Matthews testified that she did not learn until the day of the hearing that the matter actually concerned a pen not a pin. It was as a result of her memo that this information eventually came to petitioner's attention.

Though Ms. Prinz could not recall at the hearing whether respondent may have given the pen back, an earlier statement which she gave in February 1983 indicates that at that time she ". . . felt really sure that she probably had given it back. . . ."

Respondent testified that she had been called to the casino cage to effect some change in Mr. Awadallah's credit and that she did not have a pen with her. He gave her the pen to write with but was impatient to return to the tables and did not wait for

her to finish. A few minutes later after approving a credit increase, she sought him out and returned his pen.

There is an affidavit in the record from Mr. Awadallah in which he corroborates respondent's recollection of the incident. Mr. Awadallah is a convicted felon and his affidavit is attested to by his parole officer.

This is the substance of the record on this point.

I do not believe that petitioner has established that this pen was accepted as a gift. Respondent's testimony here was credible, and Ms. Prinz had no way of knowing what happened after respondent and Mr. Awadallah left the casino cage area. Indeed, her prior statement seems to support respondent. Mr. Awadallah's affidavit adds something to the balance as well, as there would appear to be no reason for him to place himself at risk in this matter.

b. The Perfume

Eric Lundberg was a Price Waterhouse auditor at the casino. Sometime in July 1981, he was in respondent's office discussing business matters when someone came in and gave respondent a package. She opened it and it was a bottle of perfume. He recalled her saying to him that the donor was a gaming patron and that this was an expensive perfume that could not be obtained in the United States. He did not discuss this further with respondent but mentioned it to his superior, who documented it. He was in the office for only a short period of time and did not see what she did with the perfume and does not know whether she kept it.

Respondent testified that she did not particularly recall the incident but that on occasion patrons would bring her gifts of perfume, candy, flowers and the like. She would sometimes find them on her desk when she came in. She testified that she did not retain these gifts. She was informed by a Mr. Bruce Badger, the casino manager, that the audit department had reported her receipt of a bottle of perfume. When she heard this, she informed him that there was a bottle of perfume on her shelf gathering dust and that if that was the bottle he was referring to he was welcome to it. She also testified that she notified Detective Joseph Zeno, petitioner's agent in the casino, of the incident.

Subsequent to the hearing, Detective Zeno filed an affidavit in which he stated: "I have read Ms. White's testimony . . . regarding her claim that she told me about a bottle of perfume which she received. I never had any conversation with Ms. White regarding any gift of perfume or any other gift."

This is the substance of the record on this point.

Eric Lundberg was a credible witness and I accept as a fact that respondent received a gift of perfume from a patron. While she had no specific recollection of this incident she did recall that from time to time patrons would make small gifts to her and that she had occasion to discuss a bottle of perfume with the casino manager and Detective Zeno. Thus some gift of perfume did come into her possession. N.J.S.A. 5:12-100(o)(1) provides: "It shall be unlawful for any casino key employee . . . to . . . accept . . . any tip or gratuity from any player or patron. . . ." The prohibition is on the initial acceptance of the gift.

Detective Zeno's statement is unequivocal to the effect that he never discussed this matter with respondent. He was not subject to cross-examination and one can reach no conclusion as to the certainty of his recollection. Yet, even a clear explanation of how the gift was handled after its receipt would go only to mitigation, not to the violation itself.

c. The $100 Gift Certificate

The facts with respect to this allegation are not in dispute. Jerry Cook was a credit executive working under respondent's supervision. Sometime in December 1981, before Christmas, a $100 gift certificate was left for him at his desk by Joan and Milton Bialostock. They were credit players and junket representatives. The certificate was redeemable at Caesars' Tiberus Men's Store. He brought the certificate to respondent and informed her that he did not believe it was appropriate for him to accept it. He testified that she took it from him and stated that she might be able to use it for her son.

Respondent admitted that she used the gift certificate. She testified that it did not seem wrong to her. The Bialostocks had given the gift certificate to Mr. Cook, not to her. Also, the Bialostocks were junket representatives and as such, employees of the casino. She did not believe that there was any bar to accepting gifts from fellow employees.

This is the substance of the record on this point.

Respondent's use of this gift certificate was in clear violation of N.J.S.A. 5:12-100(o)(1). Her explanations here seem strained. They require that we accept that she felt justified in receiving a gift that Jerry Cook had to turn down and that junket representatives are simply employees. Counsel did not argue that N.J.S.A. 5:12-102 which requires that junket representative be licensed as casino employees, and N.J.S.A. 5:12-100(n) which exempts them from the gaming prohibition applicable to other employees, makes them any less a "player or patron" when they gamble. Such an argument would have no merit as N.J.S.A. 5:12-100(o)(1) which immediately follows the gaming exception for junket representatives, makes no similar exception with respect to the receipt of gifts from them. At best, this testimony was presented as an honest mistake. Yet, Jerry Cook put respondent on notice in this matter and if she disagreed, she ought at the least to have made further inquiry.

d. The $500 Gift Certificate

The last alleged gratuity is a $500 gift certificate from a Howard Katz and Josephine Chifano. Both were credit players and high rollers at Playboy. Respondent estimated that Katz' average bet was $300 to $400 and that he could wager as much as $1,000 in a single game. Respondent did not deny receipt of the gift certificate. She testified that Katz and Chifano were personal friends and that this was a present to her and to her boyfriend Barry Rubinstein. In October 1982, the two couples were to have vacationed together in Monte Carlo to celebrate her third anniversary with Rubinstein. Katz and Chifano had to cancel at the end but made them this gift as a way of apologizing and as an anniversary present.

Respondent testified that the two couples had gone on vacation together once before, to Mexico. She acknowledged, however, that this had not been a long-standing friendship as they had met at the casino sometime in 1981.

This is the substance of the record on this point.

The only open question here goes to the true nature of the relationships of these four people, and the record is fairly sparse on this point. Whether these were close friends or simply friendly business associations would be of some importance in assessing

whether this gift certificate was a "tip or gratuity" or merely an unrelated present. We have only respondent's testimony with respect to this charge, and she was credible here.

Petitioner points out that as high rollers and credit players, both Katz and Chifano had an interest in maintaining respondent's good will. Further, it believed that this was a rather lavish gift if it were not also intended in some way to ease their credit requests.

While this is plausible as a theory, it is unsupported by the record. Neither Katz, Chifano, or Rubinstein testified, and we can only know the intent of the gift by respondent's understanding of it. Further, I cannot speculate about what people who wager hundreds of dollars on a card might give as a present.

COUNT II

The trip to Venezuela

N.J.A.C. 19:45-1.29(b) prohibits persons employed outside of a casino's collection department from engaging in collections. The regulation is as follows:

> No person other than one licensed in a separate collection section within the accounting department as a casino key employee or as a casino employee, and one who has no incompatible functions may engage in efforts to collect returned checks. . . . Any verbal or written communication with patrons regarding collection efforts shall be made with the full knowledge of the collection employees and shall be documented in the collection section.

A Playboy internal memorandum sought to clarify the regulation for its employees. It concludes that while it would be inappropriate for an employee outside the collection department to become involved in settlement negotiations, or even to initiate communications with a patron about payment without the prior knowledge of the collection department, such an employee could "grease the path" for the collection department.

The basic facts with respect to this issue are undisputed. While credit manager, respondent had been involved in granting credit to a Moises Salti. Thereafter, he was unable to pay his markers and owed Playboy $250,000. Mr. Salti resides in Venezuela and Playboy was having difficulty collecting. It eventually filed an action in

New Jersey which it hoped would be recognized in Venezuela. Respondent testified that Mr. Salti telephoned her in anger over the suit. He trusted her and did not want to deal with anyone from the collection department. She discussed this with Dan Watson, the Chief of the Collection Department, and after reviewing the matter with their superiors, they developed a method of proceeding. During subsequent telephone conversations, Mr. Watson and respondent's secretary, who spoke Spanish fluently, were on the line. Mr. Salti could not communicate effectively in English. Mr. Watson controlled these conversations and did all of the negotiating. After reaching agreement over the telephone further meetings which included Willard Howard, vice president for Operations, and Hank Applegate, vice president of Finance, it was decided that respondent would travel to Venezuela as a messenger to deliver the settlement agreement, to have Mr. Salti sign it and to pick up a first installment. She received an advance from Playboy for expenses and was to be accompanied by Barry Rubenstein. The trip had originally been scheduled for March 1, 1982, but Mr. Salti was either ill or out of the country at the time and the trip was rescheduled for the middle of May 1982, some three months later. During this period, counsel for Playboy, David Sachs, was also asked to comment on the propriety of the trip. His memorandum in evidence references the regulation but does not render an opinion one way or the other as to the propriety of the trip.

This was the first such settlement entered into by Playboy because as a matter of policy it had been afraid of the precedent that might be set. The agreement called for Mr. Salti to make a $10,000 payment upon execution, and then to make three additional $10,000 payments at 90-day intervals, with the remainder to be paid not later than December 31, 1982.

Respondent testified that she had no desire to be involved in this matter and that she went to Venezuela because her employer expected it of her. During her meeting with Mr. Salti, she handed him the contract and at that point noticed that the dates were inconsistent because the contract had been prepared in anticipation of its being signed in early March 1982. It was actually executed on May 20, 1982. She changed the final due date from December 31, 1982 to March 20, 1983, so that it would be consistent with the execution date and the established payment intervals. When she left, Mr. Salti gave her a check for $20,000, though the agreement called for a $10,000 payment. Upon her return, management was "elated."

Dan Watson testified in respondent's behalf. He fully corroborated her testimony. He had made efforts to collect this debt from Mr. Salti to no avail. Playboy's subsequent legal action apparently angered him and he contacted respondent to complain. He discussed a plan of action with management and it approved. He conducted all negotiations and prepared the basic settlement agreement for review by Playboy's attorneys and the comptroller. He also testified that the date changes made by respondent in Venezuela were necessary for the internal consistency of the document. He stated that if he had reviewed it before respondent left, he would have had it retyped to reflect these changes.

Willard Howard also testified on this point indicating that it was his understanding that respondent was simply assisting the collection department and that this was permissible. He approved the trip.

Anthony Restuccia is the agent in charge of licensing renewal for petitioner. He explained that one of the purposes of the regulation in question is to limit the ability of employees to conceal their errors. The instant facts were to him a good case in point. Respondent had granted the credit which had gone bad and then became involved in the collection of that debt. She was thus in a position to give Mr. Salti a better deal then he might otherwise receive in an effort to make herself look better.

In reaching his conclusions, Mr. Restuccia had reviewed the general background of the case and the agreement signed by Mr. Salti. He had not spoken to Dan Watson or to respondent about the trip. Nevertheless, even after learning of the limited nature of respondent's involvement, he continued to believe that in accepting the check and changing dates in the agreement, respondent violated the regulation. Indeed because of her incompatible function, she could not rightfully act even as a messenger.

This is the substance of the record on this count.

As the facts are essentially undisputed, the question is simply one of interpreting the regulation as it applies here. I can find no infraction. To the contrary, it appears that respondent was given a delicate assignment in which she exhibited a good deal of business sense. Respondent did not seek this situation out in an effort to cover her tracks or to involve herself in a plan of fraud. She was approached by Mr. Salti because he would not deal with the collection department. It is his selection of her that makes the

circumstances unique. Playboy was thereby placed in a difficult position. It had either to utilize respondent in some way or risk the loss of substantial sums. Mr. Watson negotiated while respondent more or less reassured Mr. Salti. She then went to Venezuela to have him sign the agreement and to accept his money. At no time was she in a position to cover up earlier errors. The only area of any doubt in the matter involves the changes she made on the settlement agreement while in Venezuela and beyond the watchful eye of her employer. Petitioner argued that these changes resulted in a delay of payment to Playboy and thus are evidence that she did negotiate in some respect. I do not agree. A review of the settlement reveals that it was executed three months later than the parties intended. But for these mechanical changes, it would have been internally inconsistent and might well have caused confusion later. Mr. Watson, who was a highly credible witness, testified that had he thought about it before she left, he simply would have retyped the agreement to reflect these later dates.

COUNT III

Business Ability

In this count petitioner asserts that the quality of respondent's work was so poor that she lacks the business ability required by the act of key employees. It developed two broad areas of testimony to support this contention. First, it presented Robert Aschiero, who was an internal audit supervisor at Playboy when respondent was credit manager. He supervised an audit of the credit department and testified about his findings. John O'Brien is employed by petitioner and separately reviewed ten credit files which he discussed at the hearing.

a. The Aschiero Report

Mr. Aschiero testified that he randomly selected 73 credit files for review. He also assessed various credit practices in light of the department's own policy and procedures manual. He found 21 problem areas. His main criticism was that credit was granted too liberally to persons whose credit applications did not support either the initial grant of credit or any subsequent increase. He found for example that temporary credit limit overrides, which are one time credit increases, were granted without reference to the policy and procedures manual. The manual established certain maximum overrides for different categories of players. A player with a credit limit of up to $2,499 could receive

no override. A player with a limit of between $2,500 and $9,999 could receive an override of $1,000 and so on. He also found that in a large percentage of cases employment information provided by applicants was not verified. Similarly, credit bureau reports were frequently not obtained. Post office boxes were accepted in lieu of actual residences in violation of N.J.A.C. 19:45-1.27(d)2. He found that credit lines were not updated regularly so that the casino was holding stale information. The credit committee provided for in the manual had not been established. This committee was to have been made up of upper levels of management to which the credit manager would report. He found that there was no way of monitoring which of the credit executives were issuing the poorest credit thus making it impossible to hold them accountable for their individual decisions. The surveillance department was rarely contacted for information though it might be in a position to be of assistance. He found finally that the staffing level of the credit department was insufficient. Mr. Aschiero acknowledged that this had been his first review of a credit department.

Jerry Cook, who had testified with respect to the $100 gift certificate, was called by respondent to testify with respect to this charge. He has been involved in casino credit for many years and was a credit executive at Playboy during this period. He took over as manager from respondent at about the time this audit was starting. He is currently employed by Resorts. While acknowledging that there were problems in the credit department, he did not believe that Mr. Aschiero fully understood the process by which casino credit was granted and that his sampling was not adequate. He testified that many factors control credit decisions including the credit application and credit bureau report, but these are not more or less important than others. Decisions are often based on payment history with other casinos, recommendations from upper management, personal interview and gut reactions based on experience. Thus, the audit placed a disproportionate reliance on the insufficiency of the credit applications. He also testified that there were at least 6,000 open files in the credit department and that 73 samples did not provide a true measure. Further, more than half of the 73 applications reviewed were taken from the first four months of operation. This was a hectic period in which new and largely inexperienced credit executives and clerks were called upon to deal with a crush of applicants. Procedures which had been thought out prior to opening proved to be inadequate. Mr. Cook testified that the entire department worked long hours to try to keep up. Adding to this pressure was the sense that upper management wanted to increase its share of credit business because other casinos, particularly the Sands, had a larger credit drop then did Playboy.

Willard Howard also testified on this point. He has been in the casino business for some 25 years and worked his way up through the ranks. The credit department was under his overall supervision. He agreed with Mr. Cook that credit card applications and credit bureau reports are not the only measure of credit worthiness. Prior payment history at other casinos, recommendations and like considerations are also important. He acknowledged that the company had been interested in increasing its credit drop, but would not agree that this was to be at the expense of sound credit policy. He was generally aware of the department's credit manual but thought of it as a guideline. No one was under an obligation to follow it closely. Indeed, many of its policies, particularly with respect to temporary and permanent limit overrides, were inflexible, and their strict use would have placed the company at a competitive disadvantage.

Dan Watson, the collection manager who testified mainly with respect to Count II of petitioner's complaint, added here that overall returned markers from the credit department were under two percent. This is apparently about average for the casinos as a whole. This figure is reflected in a transcript in evidence of a hearing before the Commission in January 1984 on the very question of regulating credit. Petitioner did not dispute this figure.

Respondent also testified. She began in the casino business in Las Vegas as a filing clerk in 1967. She worked her way up over the years and the credit manager position at Playboy was a big promotion for her. The credit department consisted of 12 clerks, 5 credit managers, and a few secretaries. This quickly proved inadequate to the task. During her tenure she handled between 7,000 and 10,000 files. She often worked 12 hour days, 6 days a week to keep up. She shared a cramped office, and customers lined up outside her door waiting to be attended to. She received no complaints from management while she was credit manager; indeed, she was told regularly that the company was pleased with her work. She accepted a promotion to the position of casino host in October 1982, and this is why she left the credit department. She was fired in January 1983 for reasons stemming out of the charges brought here. She also testified that she was not authorized to sign for credit beyond $25,000 and required Mr. Howard's signature in order to grant further credit.

As this aspect of the count is somewhat more involved than the prior fact patterns, specific findings may be appropriate. Thus, I **FIND** the facts as follows:

1. During her tenure as credit manager respondent handled at least 6,000 credit files.

2. She worked long hours in crowded conditions, and her department was understaffed.

3. During this period upper management was seeking to increase its credit drop.

4. Respondent could not approve credit beyond $25,000 without Mr. Howard's approval.

5. Respondent was never criticized during her tenure as credit manager.

6. In assessing credit worthiness the department used a variety of factors including credit applications, credit bureau reports, prior play at other casinos, payment history elsewhere, references from upper management, and intuition based on job experience.

7. The overall losses experienced by the credit department during respondent's tenure were no greater then the norm for other casinos.

8. Management did not expect the policies and procedures manual of the credit department to be followed strictly.

These findings lead me to conclude that this aspect of petitioner's case is without substantial merit. Mr. Aschiero did not explain his random sampling method and I cannot say whether his sample was statistically valid. It does appear to be weighted somewhat toward the early months of the casino's operations. More importantly his conclusion that credit was granted too liberally to many poor risk players is not borne out by respondent's overall return rates. Petitioner argued that the comparison of overall return rates is irrelevant as respondent's decisions must stand on their own and not rely on the fact that poor risks did not go bad. Yet the truest statistical test is the one which uses all of the files. If Mr. Aschiero's smaller study were accurate, a much higher return rate should be reflected in the larger sample.

A number of Mr. Aschiero's other findings focused on the Department's failure to follow the policy and procedures manual. While these criticisms were entirely valid from his perspective as an accountant, in reality policy had not been as well established as the manual led him to believe. When particular policies did not work they were disgarded. No one had as yet gotten around to changing the manual.

b. The Ten Files

Petitioner's second avenue of attack was presented through the testimony of John O'Brien, a CPA and senior agent in the audit section. His testimony analyzed ten individual credit files in great detail. Each was presented as a particularly poor decision either because the initial grant of credit or a subsequent increase was not supported by the bank data, or because particularly derogatory information which had been received had not been utilized. Mr. O'Brien's assessment was based entirely on the credit card applications that were filed and the credit bureau checks and surveillance reports that were made and available to the credit department. He did not consider information outside these sources. After Mr. O'Brien's presentation, other witnesses on both sides commented on some or all of these cases both directly and in the form of hypothetical questions. In some cases there was agreement that a particular set of decisions was poor, while in others there was not. Mr. O'Brien himself has never been involved in granting casino credit.

Though petitioner spent much effort in developing these case files, I do not believe that an in-depth review of respondent's performance on each of these would be useful. Some were without doubt poor decisions. One such example is the file of an individual whose credit was increased after it was learned that he had been convicted and sentenced to a term in prison. Others are less clear. In one case the casino eventually had to write off some $225,000 for a patron whose credit card file did not come near supporting this level of credit. However, Willard Howard testified that he met this individual at a party sponsored by Playboy to encourage Middle Eastern business. Eventually he became convinced that this person was a Saudi Arabian prince and good for almost any amount of credit. Respondent granted credit in this case based on this information.

Even assuming that each of the ten files in some way reflects adversely upon respondent, there are two essentially undisputed facts in the record which have already been noted that render this line of attack harmless. The first is that in comparison with other casinos Playboy did not suffer excessive credit losses during respondent's tenure. Further, respondent handled at least 6,000 credit applications, during 11 months as credit manager. These ten examples appear to be worst case situations that prove nothing in light of the overall number of files handled.

Finally, both lines of attack in this count must be understood in the proper regulatory context. The act establishes business ability as a criteria for casino key employees, but the regulations do not become involved in the credit manager's decision-making processes. Thus, even if one could agree entirely with Messrs. Aschiero and O'Brien that heavy reliance should be placed on bank data, that more information should be sought from applicants, and the like, we could not in fairness hold respondent to such a standard. It is evident from the transcript of the Commission's public hearing on credit held long after respondent's tenure, that it was still formulating policy in this area. Absent specific guidance I cannot conclude that someone lacks business ability, unless it is shown that their performance either in relation to other credit managers or independently was so poor that their incompetence is almost self-evident. That is far from the case here.

CONCLUSIONS

Petitioner has established that respondent accepted a "tip or gratuity" in the form of perfume and a $100.00 gift certificate. In this respect, she violated the statute and is subject to discipline. I do not believe, however, that revocation of her license would be appropriate. Respondent has worked her entire adult life in the casino industry and has been promoted regularly over the years. She was overall a credible witness. There is no charge of any quid pro quo for the receipt of these gifts. What has been shown is that she lacked the sensitivity to appearances required by the Act. Respondent has been out of work for almost two years as a result of this episode. She has suffered the expense of litigation and the cloud that her dismissal and these proceedings have placed upon her reputation. Thus, the penalty already imposed adequately teaches the lesson to be learned here, and more would be disproportionate.

It is thus **ORDERED** that respondent be permitted to retain her casino key employee license.

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

11/2/84
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 08 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

ij

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WITNESSES

Eric Lundberg
Edwina Cooker
Sharon Matthews
Barbara Prinz
Mary Polisano
Mitchel Schwefel, Esq.
Jerry Cook
Robert Aschiero
John O'Brien
Arnold Fleishman
Anthony Restuccia
Willard Howard
William Small
Don Wood
Dan Watson
Carol White

EXHIBITS

P-1 Playboy Hotel and Casino - Casino Credit Executive Operating Manual

P-2 Internal Audit of the Casino Credit Department - Preliminary Report

P-3 Write off memo 1/26/83

P-4 Interoffice Correspondence from Charles G. Cusick

(a)	Tortorello	12/18/81	1 page
(b)	Celestino	11/25/81	1 page
(c)	John Barbato	6/24/81	1 page
(d)	Bonafede, et al.	12/22/81	1 page
(e)	Vincent J. Bonafede	12/21/81	2 pages
(f)	Bonafede Amplo	10/21/81	3 pages
(g)	Bonafede Amplo	10/21/81	1 page
(h)	Kapinos	6/10/81	1 page

P-5 Ala Al-Khawaja Application File

P-6 Anthony Tortorello Application File

P-7 Vincent Bonafede Application File

P-8 Andrew Amplo Application File

P-9 Robert Kapinos Application File

P-10 Augusto Navarro Application File

P-11 Paul Zaccaria Application File

P-12 Joel Posner Application File

P-13 John Chabot Application File

P-14 Joseph Celestino Application File

P-15 Sylvia Kaminsky Application File

P-16 Alfredo Gallo Application File

P-17 Gucci's Receipts - Boardwalk Regency Casino

P-18 Tiberius Receipts - Boardwalk Regency Casino

P-19 Arnie Fleischman Interoffice Correspondence

(a) June 21, 1982
(b) Policy on Soliciting or Accepting Gifts
(c) January 26, 1983 - Carol White Termination

P-20	David M. Satz, Jr., Memo on Collection Efforts on Returned Checks
P-21	Sharon Matthews Memo on Alleged Gifts
P-22	Robert J. Aschiero Memos
P-23	Playboy/Elsinore Associates vs. Moises Salti, Acknowledgement of Service and Stipulation of Settlement, 6 pages
P-24	Moises Salti - Venezuela Collection
P-25	Deposition of Carol White, 12-8-82
P-26	Indictment - U.S.A. v. Ibrahim Awadallah
P-27	Moises Salti Application File
P-28	Interview under oral examination of Carol White, 3-1-83
P-29	SCI Report and Recommendations
P-30	Preliminary Audit Report of 8-12-82; Internal Audit's Responses to Jerry Cook's Written Questions from Bob Ascherio, 9/29/82
P-31	Chronology of the credit files reviewed
P-32	Affidavit of Detective Joseph Zeno

R-1	Memo of Hank Applegate, 11/23/81
R-2	Affidavit of Ibrahim Awadallah
R-3	Transcript of hearing before Casino Control Commission, 1/17/84

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-247
REGISTRATION NO. 43282-40
OAL DOCKET NO. CCC 7951-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

DONALD C. WILLIAMS

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 19, 1985;

IT IS on this 26th day of JUNE 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the casino hotel employee registration of Donald C. Williams is revoked substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Donald C. Williams is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Donald C. Williams, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7951-84

AGENCY DKT. NO. 83-247

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

DONALD CHARLES WILLIAMS,

Respondent.

Paul A. Vagianos, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Anthony V. D'Elia, Deputy Attorney General, at the prehearing conference)

Donald Charles Williams, respondent, pro se

Record Closed: March 18, 1985 Decided: May 2, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Donald Charles Williams, respondent. The Division alleged that Mr. Williams had committed a criminal offense, for which the Division seeks revocation of his casino employee registration, pursuant to section 129 of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on July 29, 1983. By letter dated August 22, 1983, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed on October 17, 1984, the respondent requested a hearing. On October 23, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 8, 1985. The matter was heard on March 18, 1985, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Williams is 22 years of age. He is a 1982 graduate of Pleasantville High School. He has also successfully completed a program of study for fashion and design at the Atlantic County Vocational School.

From 1982 until January 29, 1983, the respondent was employed as a porter in the housekeeping department of the Sands Hotel and Casino (Sands).

From January 29, 1983, and while the respondent was assigned to clean a hallway on the 19th floor of the Sands, he was involved in an incident which led to the filing of the subject charges. Although some of the circumstances underlying the incident were in dispute, it was evident that Donald Tobe, director of housekeeping for the Sands, found the respondent and Marsha Birts, the respondent's immediate supervisor, to be in possession of a package of cocaine and a straw. Mr. Tobe contacted Sands security and the New Jersey State Police, Casino Investigation Bureau. Also, Mr. Tobe fired the respondent and Ms. Birts (P-4).

The respondent was arrested by the New Jersey State Police and was charged with a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, cocaine (P-1, P-2 and P-3). On January 10, 1984, the respondent appeared in the Atlantic City Municipal Court, pled guilty and received a conditional discharge (P-5). The respondent successfully completed the terms and conditions of the conditional discharge,

and, on March 13, 1985, the charges were dismissed (R-1). The respondent has not been involved in any other violations of the criminal laws. Further, the remainder of the respondent's employment with the Sands was positive.

For a two to three-month period during 1983, the respondent was employed as a dishwasher by the Down Beach Deli in Margate. For a three-month period during early 1984, he was employed as a part-time janitor at Globe Cleaners. In addition, from November 1983 to August 1984 the respondent was employed as a dishwasher and later as a cook by McGee's Colonial Inn. He has been unemployed since August 1984.

During a search of the respondent, an additional plastic bag containing cocaine was found in his wallet.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances under which the respondent came into possession of the two packages of cocaine and the straw.

The evidence offered by the Division on point consisted of an investigation report prepared by the investigating officer (P-2). More specifically, the report indicated that Mr. Tobe observed the respondent and Ms. Birts in a closet on the 19th floor of the Sands and in the process of an attempt to use cocaine. The respondent dropped the package and began to leave the area. Mr. Tobe retrieved the package and contacted security and police authorities. Following his arrest, the respondent admitted that he was attempting to use the cocaine.

Mr. Williams testified to his version of the incident. More specifically, while working in the hallway he discovered the two packages of cocaine and a straw on the floor. He placed one package in his wallet and the remaining package, which was open, into his shirt pocket. He thought the substance was possibly a drug. He then took the materials to Ms. Birts, whose office was in a closet. As the respondent was showing the substance to Ms. Birts, Mr. Tobe appeared. The respondent handed the package to Mr. Tobe, and upon inquiry, advised Mr. Tobe that the materials were his, simply because

he had them in his possession. The respondent returned to work; however, he did not dispose of the remaining package. The respondent testified that he was too busy at work and did not think of disposing of the package. Further, when arrested by the State Police, the respondent observed less cocaine in the open package than was there when he gave the package to Mr. Tobe. Also, the respondent denied that he admitted to the State Police that he was going to use the cocaine. Subsequently, the respondent testified that he retained the unopened package of cocaine because, although he did not use the substance, he had friends who did and to whom he was going to give the package. In addition, the respondent testified that he pled guilty to the charge in municipal court because he was in actual possession of the drug, although he still contended that it was not his.

The resolution of the area of dispute in this matter is difficult because the Division's proofs consist solely of a narrative in a police report of an incident made by a person who was not an eyewitness thereto and because the respondent, whose testimony was not corroborated, denied the most damaging accusations contained in the report and provided a substantially different version of the incident. In essence, the entire outcome of this matter rests upon an assessment of the respondent's credibility, which assessment must be made, in part, in consideration of second degree hearsay.

I am persuaded not to accept the respondent's version of the incident, because his exculpatory testimony was not consistent with the undisputed facts. More specifically, the respondent possessed a controlled dangerous substance as well as the paraphernalia to use the substance. Also, the circumstances under which the respondent claims to have come into possession of the substance were extraordinary at best. Further, the respondent made no effort whatsoever to turn over the second package of cocaine and knowingly and intentionally hid the package with the intent to give it to others for their use. This last statement was inconsistent with the respondent's earlier testimony that he did not turn the materials over to Mr. Tobe because he feared repercussions and later forgot to dispose of it. In essence, and without making any finding upon the information contained in the investigation report, I am persuaded that the respondent's exculpatory testimony was not worthy of belief.

Accordingly, the evidence clearly indicates that the respondent knowingly possessed a controlled dangerous substance under the circumstances previously indicated.

After consideration of the entire record in this matter, I further **FIND** that:

1. The respondent's exculpatory testimony concerning the incident was not, in part, internally consistent and was not consistent with undisputed facts, and, therefore, is not worthy of belief.

2. The respondent was knowingly in possession of a controlled dangerous substance, cocaine, at the time of the incident.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(4)

Because of the absence of a conviction, the Division brought this matter under section 86g of the Act. Section 86g provides for disqualification of an applicant or license holder because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. More specifically, the Division contends that the respondent's misconduct renders continued registration inimical to the policies of the Act under section 86c(4).

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The circumstances underlying the incident are that the respondent was knowingly in possession of a controlled dangerous substance in a licensed casino while a registrant and during the course of his employment. In essence, the respondent was in knowing and contumacious disregard of the criminal laws of this state and the regulations governing the casino industry. Therefore, this misconduct is related directly to the operations of a casino and would, unquestionably, undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact on the public perception of the integrity of the casino industry.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) PENALTY

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activities;

e. To prevent future misconduct of a like nature from recurring.

The Division sought revocation of the respondent's casino employee license.

The respondent's conduct constituted a clear violation of the Act and the regulations thereunder, as well as a violation of the criminal laws. This offense, as does any violation of the regulatory scheme, constitutes a potential threat to the integrity of licensed gaming and cannot be permitted to pass unchecked. Further, the offense was serious in nature. However, with the exception of the subject incident, the respondent's employment of approximately 18 months in the casino industry was positive. Nevertheless, I am persuaded that the circumstances underlying the incident together with lack of credibility attributable to the respondent during the hearing reflect a serious disregard and a lack of appreciation of his responsibilities as a registrant under the Act. The period in which the respondent has been free of misconduct is not sufficient to establish an absence of any risk to the public and to the integrity of gaming operations. Therefore, his registration must be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Donald Charles Williams be **GRANTED** and that the registration be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 2, 1985
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

5-3-85
DATE

Victoria Good
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 07 1985
DATE

Ronald L. Parker/pm
OFFICE OF ADMINISTRATIVE LAW

ml/E

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 The State of New Jersey v. Donald Charles Williams, Atlantic City Municipal Court, Docket Number C-1057, Complaint, dated January 29, 1983

P-2 New Jersey State Police - Investigation Report, prepared by Detective I, Richard A. Rementer, January 29, 1983 (2 pages)

P-3 New Jersey State Police - Arrest Report, Donald Charles Williams, prepared by Detective I, Richard A. Rementer, January 29, 1983

P-4 The Sands Hotel and Casino - Employee Warning Notice, Donald Williams, prepared by Donald Tobe, January 29, 1983

P-5 The State of New Jersey v. Donald Charles Williams, Atlantic City Municipal Court, Docket Number C-1057, Disposition, January 10, 1984

R-1 Letter to Casino Control Commission from Bonita N. Anselmo, Clerk of the Municipal Court of the City of Atlantic City, March 13, 1985

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Donald C. Williams

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-194
OAL DOCKET NO. CCC 4890-84
LICENSE NO. 20522-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, V. RODNEY E. WILLIAMS, Respondent.	:	FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on January 23, 1985, recommending that the respondent's casino employee license be revoked; and the Division of Gaming Enforcement having filed exceptions to the initial decision on January 23, 1985; and the respondent having failed to respond to the exceptions; and Commission after considering the entire record of these proceedings, having resolved at its public meeting of February 6, 1985, to affirm and adopt the said initial decision and to revoke the respondent's casino employee license,

IT IS on this 7th day of FEBRUARY 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the respondent's casino employee license be and hereby is revoked based upon the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Rodney E. Williams is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Rodney E. Williams, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4890-84
AGENCY DKT. NO. 84-194

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RODNEY E. WILLIAMS,
Respondent.

Rodney E. Williams, petitioner, pro se

Paul Vagianos, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 5, 1984 Decided: NOVEMBER 16, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a Complaint and an Amended complaint dated June 12, 1984 seeking revocation of respondent's casino employee license. The Amended Complaint alleges the following:

1. That on March 2, 1981, respondent pled guilty to a violation of N.J.S.A. 2C:5-1 (criminal attempt); and

2. That on June 3, 1981, respondent pled guilty to 18 U.S.C.A. §2 and 287 (filing false claims against the federal government);

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3. That on June 15, 1982, respondent pled guilty to a violation of 18 U.S.C.A. §1003 (making fraudulent demands against the government in an amount less than $100); and

4. That on February 28, 1984 respondent was placed in an Accelerated Rehabilitation Program as a result of an arrest by the Philadelphia Police Department on September 27, 1983 at which time he was charged with theft and receiving stolen property for having allegedly stolen $1.00 from an undercover policeman; and

5. That respondent failed to disclose the arrests resulting in the March 2, 1981 and June 3, 1981 guilty pleas at a Division of Gaming Enforcement interview on March 2, 1981, which interview was conducted to review and update respondent's Personal History Disclosure Form - 2 (PHD-2) prior to the initial granting of his casino license on January 26, 1982; and

6. That respondent failed to disclose the June 3, 1981 guilty plea, the June 15, 1982 guilty plea and the September 27, 1983 arrest on his Employee License Renewal Application dated October 10, 1983.

The complaint sought an order of immediate suspension of respondent's casino employee license pending a license revocation hearing, and further, sought judgment that respondent's arrest and conviction record is inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4).

An interim order of suspension was entered by the Casino Control Commission (Commission) in or about the first week of July 1984, pending a license revocation hearing. A prehearing conference was held resulting in the entry of a prehearing order on August 28, 1984, which order defined the following issues to be addressed at the hearing:

1. Has respondent failed to prove by clear and convincing evidence that he is qualified in accordance with the provisions of the Casino Control Act to hold a casino employee license, pursuant to N.J.S.A. 5:12-86a?

2. Are any of the criminal offenses alleged in the Amended Complaint inimical to the policy of the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4)?

3. Do any of the allegations set forth in the Amended Complaint warrant revocation of respondent's license pursuant to N.J.S.A. 5:12-86g, on the basis that respondent committed an act which would constitute an offense pursuant to N.J.S.A. 5:12-86c, notwithstanding that the offense was not or may not be prosecuted under the criminal laws of the State of New Jersey?

4. Did respondent fail to reveal any portion of his arrest or criminal record on his Employee License Renewal Application as well as to the Division of Gaming Enforcement during a March 2, 1981 interview, in violation of N.J.S.A. 5:12-86b?

5. Has respondent been convicted of a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86c?

6. If respondent has been convicted of a statutory disqualifying offense, can he demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-90h?

6. Can respondent demonstrate his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) as incorporated in section 5:12-90 of the Casino Control Act?

A hearing was held at the Brigantine City Hall, Brigantine, New Jersey, on October 5, 1984.

FINDINGS OF FACT

Respondent is 27 years old, unmarried, with three children to whom he contributes support when he is able. He attended Rutgers University for three years, but due to financial problems, he left school before he received his degree. He successfully completed a course in roulette at the Atlantic Casino Training Academy on August 8, 1980 (P-6), and was issued a dealer's license in January 1982.

During the initial license application process, respondent apparently completed a PHD-2 on July 2, 1980 (this form was not produced at the hearing), and additionally, a

personal telephonic interview was conducted by the Division's Investigator Royle on March 2, 1981. Investigator Royle completed an investigative summary report dated April 29, 1981 (P-6). According to the report, respondent stated during his interview that he was arrested as an adult on one occasion and that the arrest took place on December 17, 1979, at which time he was charged with shoplifting two chess games valued at $109.99 each. Respondent was found guilty and fined $50 (P-6). Respondent told Investigator Royle that he stole the two chess games to give as Christmas gifts, since he had no money. The arrest was disclosed on the PHD-2 but was reported under the juvenile arrest section, with respondent explaining to Investigator Royle that he had made a mistake in filling out his application by disclosing the arrest under the wrong section. Respondent disclosed on his PHD-2 that he was arrested as a juvenile on ten different occasions by the Pleasantville and Atlantic City Police Departments.

On October 10, 1983, respondent completed his Employee License Renewal Application (P-1), since his license was to expire on January 31, 1984. Question number six on the renewal application form queries "Have you been arrested, taken into custody, charged or indicted by any law enforcement authority for the alleged commission of a crime or other offense, including any high misdemeanor, felony, misdemeanor, or disorderly persons offense, in New Jersey or in any other state or jurisdiction since you were initially licensed or since your last license renewal?" Respondent's answer to the question was "No." Question number seven on the renewal application form asks "Have you been convicted of a crime including a high misdemeanor, felony, misdemeanor, or disorderly persons offense in New Jersey or any other State or jurisdiction since you were intially licensed or since your last license renewal?" Respondent's answer to that question was "No."

Respondent has the following arrest and conviction record from January 1981 to the hearing date:

1. On January 5, 1981, respondent was arrested and charged in the City of Pleasantville with attempting to ". . .commit the crime of Theft By Deception by purposely attempting to obtain money from an account that was closed by inserting certain information in an account book, which conduct constitutes a substantial step in the commission of the crime in violation of N.J.S.A. 2C:5-1" (P-2).

On March 2, 1981, respondent pled guilty to a violation of N.J.S.A. 2C:21-5 (issuing bad checks), and was fined $100 and $25 court costs.

2. On January 28, 1981, respondent was arrested by the United States Marshall's Office for filing false claims against the United States Government on March 4, 1980 when he executed a claim against the United States Goverment through the Veteran's Administration, stating that he had not received a United States Treasury Check made payable to him in the amount of $1254.37, which check he had in fact previously received, endorsed and cashed. When respondent received a replacement check in the same amount, he endorsed and cashed the check. On June 3, 1981, represented by counsel, respondent pled guilty to the offense of filing fraudulent demands against the United States Government in violation of 18 U.S.C.A. §1003. The sentence was suspended, and he was placed on probation for two years, pursuant to the Young Adult Offender's Act, 18 U.S.C.A. §4216, upon the condition that he pay full restitution totalling $1,254.37 in installments as determined by the Probation Department (P-3).

3. On June 15, 1982, respondent again pled guilty, accompanied by counsel, in the United States District court to a violation of 18 U.S.C.A. §1003 for double-cashing of United States Government checks in an amount less than $100. The sentence was suspended, and respondent was placed on probation for a period of six months pursuant to 18 U.S.C.A. §4216. A condition of probation was that respondent was to make full restitution during the probation period.

4. On September 27, 1983, respondent was arrested for stealing $1.00 from a Philadelphia undercover police officer.

On February 28, 1984, respondent was placed in an Accelerated Rehabilitation Disposition program by Judge Jenkins, of the Philadelphia Municipal Court (P-5). The Accelerated Rehabilitation Disposition program in which respondent was enrolled as a result of his September 27, 1983 arrest did not require any counselling or therapy. Rather, respondent was simply told to report to someone at the program

if any problems developed such as subsequent arrests or convictions. Respondent did not have contact with anyone at the program after signing his initial enrollment papers.

On October 18, 1984, respondent submitted to the Office of Administrative Law, a statement dated October 10, 1984 which stated "I adhere to the fact that Rodney E. Williams has demonstrated good faith and character at Tropicana Hotel Casino. Furthermore I recommend that he be able to pursue all if any asperations [sic] and goals in the casino industry." This statement was signed by fifteen persons allegedly employed in the position of dealer, floorperson, pit boss, and security officer (R-5). The Division objected to any weight being attributed to this document, by letter dated October 17, 1984 (P-7).

Respondent failed to disclose any of the above arrests and/or convictions on his October 10, 1983 employee license renewal application. At the hearing, the Division was unable to provide proofs as to whether the January 5 and January 28, 1981 arrests were considered when respondent's initial license was granted in January 1982.

Respondent ultimately took out a loan to make full restitution of the government checks. He stated that the double-cashing of the government checks resulted from financial hardship he was experiencing while attending college at a time when he was attempting to pay his tuition and deal with personal problems at home. He needed money and decided to double cash the checks. Respondent stated "I know it was wrong. I am sorry I did it. I feel the repercussions now, but to do it all over again, no, I wouldn't do it. Yes, I feel as though I learned a lesson from this and I am willing to do whatever is necessary to prove myself to the court and to the Commission, to show them that I am not the kind of person that they had already the opinion of me, in light of these convictions and all that."

Respondent claims that the January 5, 1981 arrest for attempting to remove funds from a closed bank account resulted from a typographical error on the part of a bank employee who failed to note the proper balance in respondent's bank book. Respondent stated "I still had $300-some-odd-dollars in my account. I tried to withdraw it. I didn't know if I had it in there or not. This is what happened. It was really like an oversight, I guess."

Respondent said that he should not have been arrested in Philadelphia, and that he was a "victim of circumstance." He testified that he did not take any money out of the police officer's pocket, but rather, he picked up money which had been dropped by two men who actually took the money from the police officer. Nevertheless, respondent was the one who was arrested. He said he discussed the matter with his lawyer who told him he would have to prove a defense if the matter went to trial. Consequently, he agreed to enter the rehabilitation program.

Respondent claims that he did not disclose the September 27, 1983 arrest and the June 15, 1982 conviction on his license renewal application form because he was under the impression that the June 3, 1981 and June 15, 1982 convictions as well as the September 27, 1983 arrest would be expunged from his record. Respondent presented a certificate of Vacation of Conviction from the United States District Court for the District of New Jersey, dated June 7, 1982, setting aside the June 3, 1981 conviction of filing fraudulent claims against the United States Government in the amount of $1,254.37 (R-3). He stated the June 15, 1982 conviction was also set aside but he could not locate the certificate of Vacation of Conviction.

Respondent has had the following casino employment experience:

1. He was employed for approximately nine months at Harrah's Hotel Casino as a roulette dealer during 1982.

2. He was employed at the Golden Nugget Hotel Casino as a change person for approximately six months during 1983.

3. He was employed at the Tropicana Hotel and Casino as a blackjack and roulette dealer for approximately one year prior to the July 1984 interim suspension of his dealer's license.

Respondent's blackjack dealer evaluation form dated November 5, 1983 during his employment at Tropicana reveals that he was rated average (R-1).

DISCUSSION AND CONCLUSIONS OF LAW

At the hearing, the Division was unable to provide specific information as to whether or not the January 5, 1981 and January 28, 1981 arrests were considered by the Commission in granting respondent his initial dealer's license in January 1982. Specifically, counsel for the Division stated "I do not happen to know why the Commission decided to grant his license. I know that in making a recommendation certain things are brought up, but I am not sure of all of the facts on that and I wouldn't bring them into the record here because it would be pure speculation." I am unwilling to assume that the January 1981 arrests were not considered at the time of respondent's first license application, and I therefore will not consider them as part of this revocation proceeding, since if respondent was granted a license after consideration by the Commission of those arrests, it would be inequitable to now consider the arrests as a basis for presently revoking respondent's license. Therefore, I will consider only respondent's June 15, 1982 conviction of 18 U.S.C.A. §1003 and his arrest on September 27, 1983. I do not overlook, however, the Division's argument that the January 1981 arrests, even if previously considered, may provide some insight with regard to respondent's general character as it relates to his criminal background.

With regard to respondent's June 15, 1982 conviction of filing fraudulent demands against the United States government in an amount less that $100, it is extremely significant that respondent was sentenced pursuant to the Federal Youth Corrections Act (18 U.S.C.A. §5001 et seq.). 18 U.S.C.A. §4216 provides the following:

> In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act (emphasis added).

The Federal Youth Corrections Act permits a court to sentence a young offender who does not need commitment, to a suspended sentence and further, places the offender on probation. That is precisely the disposition of respondent's June 15, 1982

convictions wherein his sentence was suspended and he was placed on six month's probation with the special condition that he make full restitution during the probation period. Section 5021 of the Federal Youth Corrections Act provides in subsection (b) "Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect." Doe v. Webster, 606 F.2d 1226, 1234-1235 (1979) held that the purpose of §5021 is to give youthful ex-offenders a second opportunity with regard to seeking gainful employment and good standing in the community. The affect of setting aside a conviction under §5021 is that the Federal Bureau of Investigation upon notification that a conviction has been set aside, must respond negatively to all inquiries concerning the youthful offender's conviction which has been set aside, and further, the offender whose conviction has been set aside may legally reply negatively to all questions pertaining to his former conviction. The conviction records are to be removed from the central criminal files and placed in separate storage areas not to be examined other than when necessary in the course of a bona fide criminal investigation by law enforcement authorities. Doe v. Webster, supra at 1244. Respondent testified that his June 15, 1982 conviction was set aside (as was his June 3, 1981 conviction.) I **CONCLUDE** that respondent was not obligated to report the arrest or conviction on his employee license renewal application which he completed on October 10, 1983, after the conviction was set aside. Doe v. Webster, supra, held that all inquiries concerning convictions which have been set aside (which conceivably would include the arrest itself and the events surrounding the offense) may be responded to negatively by the ex-youthful offender who is asked questions about his conviction. Further, respondent's employee license renewal application is not a "bona fide criminal investigation" which would require the June 15, 1982 conviction to be revealed. One of the primary purposes of §5021 is to protect a youthful ex-offender's opportunity for employment. It is significant that Doe v. Webster involved a law school graduate who had been sentenced under the Federal Youth Corrections Act and who was in the process of applying for employment in the legal profession. It may be safely assumed that the legal profession is a highly regulated one (as is the Casino Industry) which requires consideration to be given to a lawyer's character and criminal background with regard to admission to the bar, retention of one's license to practice law and in seeking employment. Hence, with regard to the June 15, 1982 conviction, I **CONCLUDE** the following:

1. Respondent has not violated N.J.S.A. 5:12-86b insofar as federal law permitted him to not reveal his June 15, 1982 conviction (or his March 3, 1981) on his October 10, 1983 employee license renewal application.

2. The issues of inimicality, as well as respondent's reputation for good character, honesty and integrity as it relates to the June 15, 1982 conviction, should not be addressed, since respondent was not required to report conviction on his license renewal application.

The arrest on September 27, 1983 is another matter altogether. At the time that respondent signed his license renewal application form on October 10, 1983, he had been arrested in the City of Philadelphia, but no action was to be taken on the arrest until October 26, 1983 (P-5). Question number six on the Employee License Renewal Application Form very clearly asks whether the licensee has been arrested since his license was initially granted.

Respondent's execution of his license renewal application form occurred only two weeks after his arrest. I find that there is absolutely no justification for respondent to have not reported the arrest on his renewal form. Even if at the time that he signed the form, he was under the impression that he would be enrolling in a rehabilitative program, and that his record would ultimately be expunged, it is unquestionable but that respondent was not enrolled in the program at that time, and further that his record had not been expunged. Respondent is an intelligent person with three years of college education at Rutgers University. I can only conclude that he deliberately omitted reference to this arrest with the hope that it would not be discovered by the Division during its investigation. The nature of the events surrounding the offense, as well as respondent's explanation as to his involvement in that offense, concern me considerably less than the fact that he failed to report the arrest on his renewal form. N.J.S.A. 5:12-86b provides that the Commission shall deny a casino license to any applicant who has failed to provide information, documentation and assurances required by the Casino Control Act or requested by the Commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to material facts pertaining to the qualification criteria. Under the circumstances of this case, respondent clearly should have reported the arrest on his application form. If at the time that he executed the form, he was under the impression that he would be accepted

into the rehabilitation program and that his record would ultimately be expunged, he clearly should have explained that information on the form. An arrest which occurred only two weeks prior to the execution of a renewal application form is clearly a material fact, and one which Section 86b absolutely requires the applicant to report. I therefore **CONCLUDE** that respondent has violated N.J.S.A. 5:12-86b which renders him disqualified rom licensure.

It should be noted that I have given no weight to respondent's juvenile record since that record was revealed during his first application process and would have been considered at the time that his initial license was granted. Further, I have given no weight to respondent's petition which has been signed by fifteen alleged casino employees. There is no way of knowing (1) how long any of the persons signing the petition have known respondent, (2) the nature of their relationships with respondent, and (3) whether knowledge of respondent's criminal and arrest record as well as his failure to reveal the September 1983 arrest on his renewal application form would in any way influence their opinions of him. Further, it is not known whether the persons signing the petition were informed as to the precise purpose for which respondent requested the petition.

I further **CONCLUDE** that respondent's failure to report his September 1983 arrest on his license renewal application form, is evidence of his failure to prove by clear and convincing evidence his reputation for good character, honesty and integrity. The license application process is critical to ensuring that the best caliber persons are licensed to work as dealers. If a licensee during the renewal process is not truthful on the application by failing to report a very recent arrest, his integrity and honesty are clearly called into question. Respondent's explanation as to why he did not report the arrest is unacceptable.

Having only considered the June 15, 1982 and September 27, 1983 arrests for purposes of this revocation proceeding, I therefore cannot **CONCLUDE** that respondent has been convicted of a statutory disqualifying offense and therefore do not address the issue of rehabilitation. I cannot **CONCLUDE** that the September 27, 1982 arrest was inimical to the Casino Control Act and Casino operations. The proofs presented by the Division as to that arrest were minimal, i.e., consisting essentially of exhibit P-5 which merely reported the disposition of the matter. The disposition itself, warrants a conclusion that the offense was minor. The details of the arrest came from statements

from the Division's counsel, but were not supported by any arrest or investigation reports or testimony from any witnesses or police officers involved in the matter. Respondent's explanation of his involvement in the September 1983 offense was plausible, and uncontradicted by any documents or testimony presented by the Division.

Finally, an issue was raised at the prehearing conference as to whether respondent committed any acts which would constitute an offense pursuant to N.J.S.A. 5:12-86g on the basis that he committed an act which would constitute an offense under section 5:12-86c, notwithstanding that the offense was not or may not prosecuted. The only offense which was apparently not prosecuted and did not actually result in a conviction was the September 27, 1983 arrest. However, for the same reasons that I have concluded that I cannot make a finding that the September 27, 1983 arrest was inimical, I cannot **CONCLUDE** that respondent's license should be revoked pursuant to N.J.S.A. 5:12-86g. The proofs are inadequate to establish exactly what respondent's conduct was on that date, and further, there were no arguments presented by the Division to analogize that conduct to a specific section of New Jersey's Criminal Code.

ORDER OF DISPOSITION

It is therefore **ORDERED** that respondent's casino employee license shall be **REVOKED** for a violation of N.J.S.A. 5:12-86b in that he failed to report his September 27, 1983 arrest on his license renewal application form.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 16, 1984
DATE

Valerie H. Armstrong
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

DATE

Lynn A. McCarell
CASINO CONTROL COMMISSION
Principal Legal Analyst

Mailed to Parties:

Nov 21, 1984
DATE

Brad L. Parker /pkb
OFFICE OF ADMINISTRATIVE LAW

ks

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Respondent's Employee License Renewal Application Form, dated October 10, 1983

P-2 Complaint in the matter of State of New Jersey v. Rodney Ellis Williams, dated January 5, 1981

P-3 Complaint in the matter of United States of America v. Rodney E. Williams, dated January 7, 1981 (Docket number 81-0001M-01) and Judgment and Probation/Commitment Order, dated June 8, 1981 (3 pages)

P-4 Complaint in the matter of United States v. Rodney Williams (Docket number 92-60576-0) (undated) and Judgment and Probation/Commitment Order, dated June 15, 1982 (2 pages)

P-5 Disposition of Commonwealth v. Rodney Williams, dated September 27, 1983 (2 pages)

P-6 Investigative Summary Report prepared by Investigator Royle, dated April 29, 1981 (10 pages)

P-7 Letter from Deputy Attorney General Vagianos, dated October 17, 1984 addressed to the Office of Administrative Law (2 pages)

R-1 Blackjack dealer evaluation form, dated November 5, 1983

R-2 Order of Discharge from Probation from the United States District Court for the District of New Jersey, dated June 7, 1982

R-3 Certificate of Vacation of Conviction in the United States District Court for the District of New Jersey, dated June 7, 1983

R-4 Criminal transcript in the matter of Commonwealth v. Rodney Williams, dated September 27, 1983 (2 pages)

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R-5 Petition, dated October 12, 1984 with attached letter from Mr. Williams (2 pages)

WITNESSES

FOR THE DIVISION:

None

FOR THE RESPONDENT:

Rodney E. Williams

1001

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-181
OAL DOCKET NO. CCC 4603-84
LICENSE/REGISTRATION NOS.
44923-21; 21691-40

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

V. : FINAL ORDER

DIANNE WILLOUGHBY,

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on December 4, 1984, recommending that the complaint against the respondent be dismissed; and the Commission after considering the entire record of these proceedings, having resolved at its public meeting of January 16, 1985 to affirm and adopt the said Initial Decision and to dismiss the complaint against the respondent,

IT IS on this 14th day of February 1985, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement in this matter be and hereby is dismissed based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Dianne Willoughby, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4603-84

AGENCY DKT. NO. 84-181

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

DIANNE WILLOUGHBY,

Respondent.

William E. Mountford, Jr., Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Paul Gallagher, Esq., for respondent (Micahel Land, Esq., P.A.)

Record Closed: October 18, 1984 Decided: December 4, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), filed a complaint on May 24, 1984, seeking revocation of respondent's casino employee license and casino hotel employee registration. The complaint alleges that on October 30, 1983, respondent was evicted from Resorts International Hotel Casino after soliciting a plainclothes security officer for sexual favors. Respondent filed a Notice of Defense in which she (1) denied the allegations in the complaint; (2) denied that she is not qualified for licensure or registration; and denied that she engaged in any conduct which is inimical to the policies of the Casino Control Act and to casino operations.

New Jersey Is An Equal Opportunity Employer

A prehearing conference was held in August 1984, resulting in the entry of a prehearing order on August 28, 1984, which defined the following issues to be resolved at the hearing:

1. Is respondent's conduct as alleged in the complaint, inimical to the policy of the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4)?

2. Is respondent's conduct as alleged in the complaint, comparable to a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86c as incorporated into N.J.S.A. 5:12-86g in that her conduct was not prosecuted under the laws of the state of New Jersey?

3. Do the allegations in the complaint warrant a finding that respondent does not possess the requisite reputation for good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2)?

A hearing was held on October 12 and 18, 1984 in Atlantic County, New Jersey. At the hearing, the Division conceded that respondent did not engage in conduct which was comparable to a statutory disqualifying offense, and therefore, the second issue set forth above was withdrawn.

On October 18, 1984, the Division presented its proofs which consisted of exhibit P-1 and respondent's testimony (she was called by the Division as its witness). At the conclusion of petitioner's case after the first day of hearing, respondent moved to dismiss the complaint, alleging that the Division failed to prove by the preponderance of the evidence that her conduct was inimical to the Casino Control Act and to casino operations. Respondent argued that the Division's case consisted essentially of unsworn written allegations of a Resorts International Hotel Casino security officer who did not testify on the first day of the hearing, and that respondent's testimony contradicted the allegations in the security officer's incident report (P-1). Respondent also objected to the lack of opportunity to cross-examine the security officer. Respondent's motion was denied on the basis that the security officer's general incident report which was admissable pursuant to N.J.S.A. 5:12-107a(6) contradicted respondent's testimony, thus creating a factual dispute. Respondent was afforded the opportunity to cross-examine the security officer on the second day of hearing.

FINDINGS OF FACT

Respondent is 22 years old. She moved to Atlantic County, New Jersey (from Nevada) in July 1980. She currently resides with her young daughter who has asthma, a heart murmur and a mild case of leukemia. Respondent works 40 to 60 hours per week as a housekeeping clerk and room attendant at the Madison House Hotel.

Respondent receives child support for her daughter, and earns enough income to live adequately, claiming that she could live comfortably even if she were only employed 30 hours per week. Two years ago, she inherited $75,000 from her father. The funds are apparently being held in trust, pending respondent completing her education (to be released sooner only in the event of an emergency).

Respondent has had the following casino employment experience:

1. She was employed by Resorts International Hotel Casino (Resorts) for seven days as a pit clerk during October 1983, leaving the job because she did not like the work.

2. She commenced employment for Playboy Hotel Casino during December 1983 as a change person, ultimately assuming the position of booth cashier and then blackjack dealer. She was terminated from Playboy because she had neglected to state on her job application form that she had been employed as a mail clerk at the Claridge Hotel Casino.

3. Prior to her employment at Resorts, she had been employed by Harrah's, Sands, and Claridge.

In October 1983, respondent moved into an apartment across the street from a Mrs. Joyce Baltrip. On approximately October 17, 1983, Mrs. Baltrip informed respondent that Laverne Porter (Mrs. Baltrip's sister) had arrived from Nevada. Mrs. Baltrip asked respondent to take Ms. Porter out socially since Ms. Porter was not familiar with any Atlantic City nightspots. On the evening of October 30, 1983, respondent took Ms. Porter to the Rendezvous Lounge (located just off the casino floor) at Resorts. Two contradictory versions of the events which transpired after respondent and Ms. Porter arrived at the Rendezvous Lounge were testified to by respondent and Resorts Senior Security Officer Burton Langweiler.

Respondent gave the following account of the evening of October 30, 1983:

She and Ms. Porter entered the Rendezvous Lounge at approximately 9:45 p.m. Respondent recalls that the bar area was crowded, there having been a Pavarotti concert at Resorts earlier that evening. Respondent obtained a seat at the bar while Ms. Porter stood next to her. Respondent ordered a drink (Amaretto) which she proceeded to spill. The bartender then informed respondent that someone at the bar wanted to buy her a drink, although the bartender would not reveal the identity of the person. Respondent purchased another drink, refusing the free drink being offered by the bartender. She recalls that Ms. Porter also was drinking and that Ms. Porter was engaged in a conversation with a man (who respondent later learned was plainclothes Senior Security Office Langweiler). Respondent did not participate in the conversation between Ms. Porter and Mr. Langweiler, although she recalls that at one point during the conversation Mr. Langweiler said to Mrs. Porter, "What's the matter with your friend? Why isn't she saying anything?" Ms. Porter and Mr. Langweiler conversed for about 20 minutes, during which time the bartender kept telling respondent that someone wanted to buy her a drink. Respondent became upset at not knowing who was attempting to purchase her a drink and decided to leave. She left the bar area at about 10:30 p.m. leaving Ms. Porter with Mr. Langweiler. As respondent proceeded to the lobby of the hotel, she was approached by Mr. Langweiler who told her she had to come with him. Respondent questioned this request by Mr. Langweiler wanting to know why she had to go with him, and asking what Ms. Porter had done, after observing that Mr. Langweiler had a handcuff on one of Ms. Porter's hand. Mr. Langweiler took respondent and Ms. Porter to a room off the hotel lobby, at which point in time he showed them his badge and identified himself. Respondent was upset and kept questioning why she was being detained and wanting to know what Mrs. Porter had done. Mr. Langweiler kept telling her to be quiet. Respondent, at Mr. Langweiler's request, produced her driver's license, casino license and her social security card. Respondent who by this time was crying, pleaded with Mr. Langweiler to tell her why she was being detained. Mr. Langweiler kept telling her to be quiet and ultimately placed a piece of paper in front of her and told her to sign it. Mr. Langweiler told her to sign the paper, stating that if she signed it she would not get into trouble. He also said that Ms. Porter was a disorderly person, and because respondent was with Ms. Porter, she was also considered to be a disorderly person. Three additional men whom respondent referred to as Mr. Langweiler's "bosses" came into the area where she was being detained while Mr. Langweiler was attempting to have her sign the paper which he placed in front of her. Respondent continued to question what it was that she

was being asked to sign and Mr. Langweiler told her to sign the paper or she would go to jail. He also told her that if she did sign the paper nothing would happen to her. Respondent signed the paper (P-2) which was a Resorts International Casino Hotel Eviction Form. During the time that respondent was detained, her picture was taken (P-2). The eviction form was completed by Mr. Langweiler including the date and time of the incident. The eviction form specifically states that the form was read to respondent at 1:30 a.m. on October 30, 1983. Respondent was then permitted to leave, with Ms. Porter being detained. Respondent telephoned Resorts the following morning, and asked to speak with someone in charge and inquired as to whether she needed to obtain a lawyer to find out what was going on. Respondent did not know the name of the person to whom she spoke but this person allegedly told her "Don't worry about it. I have the report right in front of me. You are not in any trouble at all." Respondent never saw Ms. Porter again, after leaving Resorts on October 30, 1983. The following day respondent telephoned Ms. Porter's sister (Mrs. Baltrip) who stated that Ms. Porter had come home.

Burton Langweiler has been employed at Resorts as a Senior Security Officer for five years. On October 30, 1983, he was working undercover at the Rendezvous Lounge as a security officer controlling vice and prostitution. He testified to the following account of the events of the evening of October 30, 1983:

Mr. Langweiler recalled that he first observed respondent and Ms. Porter at the bar between 12:35 and 12:45 a.m. He could not recall if the Rendezvous Bar was crowded on the evening of October 30, 1983 or whether or not there had been a Pavorotti concert at Resorts that evening. He engaged respondent and Ms. Porter in a conversation at the bar. Respondent identified herself as "Dianne." He bought both women a drink and they conversed with him about a party, what they were doing that evening, and how they did at the gaming tables. Mr. Langweiler testified that Ms. Porter asked him if he wanted to have a "party", noting that he was "in the middle of both of them" at the bar, stating on cross examination that he was "probably" sitting with them at the bar. After Ms. Porter asked him if he wanted to "party", respondent offered on behalf of herself and Ms. Porter to perform certain specific sexual acts for a defined price (P-1). While respondent made the offer to Mr. Langweiler, Ms. Porter rubbed her hand up and down his leg. Mr. Langweiler agreed to the offer and left the bar with respondent and Ms. Porter. In the lobby he identified himself and asked them to accompany him to an office where photographs were taken of both women (P-2, P-3). Mr. Langweiler called for an assistant.

Respondent and Ms. Porter signed eviction notices and were escorted out of the building. Mr. Langweiler did not recall what conversation, if any, took place in the detaining office. He did not recall whether he first spoke to respondent or Ms. Porter when he sat down at the bar. He also did not recall if he initially knew that Ms. Porter and respondent were together. He stated that he was at the bar with both women for approximately 15 minutes. He further claims that neither of the women were handcuffed during the detention process. Mr. Langweiler had never seen respondent before the evening of October 30, 1983, and he did not know that she had briefly worked for Resorts earlier that month. Mr. Langweiler prepared a general incident report for the events occurring on October 30, 1983 (P-1) which report was prepared at 3:00 a.m. on October 30, 1983, after respondent and Ms. Porter were evicted from the hotel. Mr. Langweiler explained that the usual procedure is that the general incident reports are not prepared at the actual time that the incident occurs. The general incident report specifically states that Ms. Porter asked him if he ". . .would like to have sex" (P-1). Mr. Langweiler had two partners working with him that evening.

I **FIND** that the following methods and procedures are utilized by Mr. Langweiler and his partners in conducting undercover surveillance in an attempt to control vice and prostitution at the Rendezvous Bar:

While there is no specific behavior which Mr. Langweiler looks for when observing a women suspected of soliciting (or about to solicit) for prostitution, he states that after working in vice for four years there is a "feeling" he gets that a woman is soliciting. He stated that there are "small signs" he looks for, such as a woman drinking cognac which he defined as a "sipping drink." According to Mr. Langweiler, another sign is a woman looking around at the other patrons; if eye contact is made between her and a patron the woman frequently gives a "small smile." He also said that another sign that a woman might be soliciting for sexual favors is if she is wearing a low-cut dress. If Mr. Langweiler suspects a woman is soliciting, his policy as a security officer is to attempt to buy her one drink, engage her in conversation to see if the woman will offer to have sexual relations with him, ask him if he wants to "party," or go to a hotel room with him. If such a conversation takes place, Mr. Langweiler will then attempt to have the woman name a price for the sexual services being offered. Mr. Langweiler then leaves the bar with a woman who has offered the sexual services. He is followed by his partner who does not make himself known until the woman is taken to the detaining office. Mr. Langweiler stated that on a number of occasions, he has been mistaken in suspecting that a woman was soliciting.

I **FIND** that no criminal complaint was filed against respondent as a result of the October 30, 1983 incident. Mr. Langweiler testified that he does not file criminal complaints as a result of incidents involving solicitation for sexual services inside Resorts.

I further **FIND** that no evidence was adduced at the hearing to demonstrate that respondent has an arrest or criminal record.

Reverend Raymond Benjamin Gaines was affiliated with the Emanuel Church of God and Christ in Harrisburg, Pennsylvania, but presently resides in Atlantic County and is involved with the New Bethel Fire Baptize Church in Atlantic City, New Jersey. He has known respondent socially for approximately two months. He has observed her on four or five occasions, noting that she has demonstrated good character.

Wanda Hines is a registered nurse, foster mother and occasional substitute teacher and has known respondent for almost three years. Respondent resided with Ms. Hines for approximately nine months shortly after her arrivial in Atlantic County. Respondent had been referred through the welfare department to Ms. Hines who would open her home up to persons who needed a temporary residence. After respondent moved out of Ms. Hines' home she would periodically visit with Ms. Hines. Ms. Hines described respondent as an "average everyday person" who was basically honest and who has good character in accordance with acceptable community standards.

James R. Dorn, Jr., is a probation officer from Atlantic County and has known respondent since 1981 in a professional capacity through respondent attempting to obtain child support from her daughter's father through the Domestic Relation Unit of the Atlantic County Probation Department. Mr. Dorn who was responsible for respondent's case, has seen her on approximately 30 to 40 occasions. Respondent presented herself to Mr. Dorn as being an honest person who presented no problems to the Probation Department, with Mr. Dorn noting that some of the Probation Department's clients can be difficult to deal with.

Waverly Taylor works at the Executive Limousine Car Wash and has known respondent for approximately one year, initially through his sister who babysat for respondent's daughter. Subsequently, Mr. Taylor's wife took care of respondent's daughter in Mr. Waverly's home. Mr. Taylor sees respondent approximately three or four times a

week when she comes to pick up her daughter. He has occasionally seen her outside of his home. Mr. Taylor describes respondent as a nice person who respected his home, noting that he has never seen her smoke, drink or curse or engage in behavior which would suggest that she is the kind of woman who would solicit for sexual services.

Seven reference letters were introduced into evidence on behalf of respondent (R-1, R-2, R-3, R-4, R-5, R-6 and R-7).

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86c(4) provides that a licensee (or registrant) may be disqualified from licensure due to any offense which would be inimical to the policy of the Casino Control Act and to casino operations. All licensees are required, pursuant to N.J.S.A. 5:12-89b(2), to demonstrate by clear and convincing evidence that they possess the requisite reputation for good character, honesty and integrity.

I **CONCLUDE** that solicitation of sexual services for a price, within a casino hotel facility is clearly inimical to the Casino Control Act and to casino operations insofar as N.J.S.A. 5:12-1b(6) states that the policy of the Casino Control Act is to maintain public confidence and trust in the credibility and integrity of casino operations. To permit a licensee or registrant to solicit for prostitution in a casino premise would patently and unquestionably the public policy of the Casino Control Act.

The Division has the burden of proof by the preponderance of the evidence to demonstrate that respondent engaged in inimical conduct on October 30, 1983. For the Division to meet its burden of proof by the preponderance of the evidence, the proofs must be such as to warrant a "presumption grounded in a preponderance of the probabilities according to the common experience of mankind" that respondent did solicit sexual favors from Mr. Langweiler. Bornstein v. Metropolitan Bottling Company, 26 N.J. 263, 274 (1958). The Division must demonstrate that the adjusted conclusion that respondent solicited for sexual favors results from a rational inference based upon a preponderance of probability according to common experience. Joseph v. Passaic Hospital Ass'n., 26 N.J. 557, 575 (1958).

The difficulty encountered in rendering a decision in this case is that the facts appear to be in equipoise. The proofs as to the events of October 30, 1983 rest solely upon respondent's testimony which clearly contradicts Mr. Langweiler's testimony.

Having had the opportunity to closely observe respondent as she testified under oath, I note that her testimony remained consistent on both direct and cross-examination. During the hearing, respondent's demeanor, as evaluated by the tone of her voice and physical responses to questioning under oath, was perceived at times to be indignant and irate, and not inappropriate for a woman who may have been wrongfully accused of the degrading offense of soliciting for sexual favors in a public establishment. By the same token, one must logically query what motivation Mr. Langweiler would have in providing inaccurate information in his incident report through the utlization of a specific verbatim quotation allegedly made by respondent. Unfortunately, that line of questioning was not pursued on cross-examination.

A careful examination of the testimony of Mr. Langweiler reveals the following weaknesses:

1. He testified that he "believed" that it was Ms. Porter who asked him if he wanted to "party" (emphasis added). His testimony never referred to Ms. Porter specifically discussing having sexual relations, yet his General Incident Report states "In the course of investigation Ms. Porter asked me if I would like to have sex" (emphasis added) (P-1).

2. The eviction forms for both Ms. Porter and respondent both state that each of them "did solicit S/O Langweiler for sex for a fee of $50. . ." (P-2, P-3). Yet the testimony of Mr. Langweiler was that it was respondent who verbally solicited sexual relations from him (on behalf of her and Ms. Porter) for a fee.

3. In light of the fact that neither of Mr. Langweiler's October 30, 1983 partners were called to testify to corroborate or clarify his testimony, it is significant that Mr. Langweiler could not remember certain rather important details such as whether he first spoke to Ms. Porter or respondent, the substance of any conversations that he had with

respondent other than the specific quotation contained in his report, and whether Ms. Porter and respondent were together when he first approached them at the Rendezvous Lounge.

4. I also find it somewhat disturbing that Mr. Langweiler, who has worked security for at least four years at Resorts, on the casino floor and in the Rendezvous Lounge could not give a general estimate as to how many seats are in the Lounge, its capacity, whether the bar was crowded on October 30, 1983, and how many bartenders were working on the evening in question.

I **CONCLUDE** that the Division has failed to meet its burden of proof by a fair preponderance of the evidence that respondent solicited Mr. Langweiler for sexual favors on October 30, 1983. Where the required burden of proof is by a preponderance of the evidence, if the material facts are in equipoise, the burden has not been meet. Cvelich v. Erie Railroad Co., 120 N.J.L. 414, 416 (Sup. Ct. 1938), aff'd. 122 N.J.L. 26 (E. & A. 1938), cert. den. 307 U.S. 633, 83 L.Ed. 1516, 59 S. Ct. 1033 (1939). Aside from the fact that the facts in this case are in equipoise, and taking into account the weaknesses in Mr. Langweiler's testimony, the additional proofs presented by respondent as to her good character, honesty and integrity have some relevance to the question of determining whether she engaged in behavior (on October 30, 1983) which was inimical to the Casino Control Act and to casino operations. Specifically, I refer to the undisputed testimony of her four character witnesses, as well as the seven reference letters submitted into evidence from her prior employers and two medical doctors who have had professional dealings with her. Aside from the fact that respondent presented adequate proofs through testimony and documentation as to her reputation for good character, honesty and integrity, her general lifestyle belies the offensive conduct of which she was accused on the evening of October 30, 1983. Specifically, respondent has no prior criminal background whatsoever, she is the mother of a small child with serious medical problems, she undisputably can support herself and her child through legitimate employment, and also of significance is the fact that her four character witnesses sat through testimony which clearly revealed the conduct of which respondent was accused, yet none of them reneged in their opinions that respondent was of good character. In examining all of the proofs submitted at the hearing, I can only **CONCLUDE** that the rational inference in this particular case, when looking at the entire picture of what allegedly happened on the

evening of October 30, 1983, and considering the respondent's general lifestyle and absence of any proof of other criminal or inimical behavior, that respondent did not engage in conduct on the evening of October 30, 1983 tantamount to solicitation for sexual favors. The Divison argued that the fact that Mr. Langweiler could not remember many of the details of the evening of October 30, 1983 is not particularly significant since Mr. Langweiler allegedly received a specific offer for sexual services and a price was set. Absent corroboration from other witnesses as to what happened on October 30, 1983, I consider those details to be extremely important when considering respondent's insistent denial that she was soliciting and when taking into account the strength of respondent's character witnesses and reference letters. I am unwilling to jeopardize respondent's casino employment based upon a 15 minute incident admittedly initiated by a security officer acting upon very subjective "feelings". I specifically note that this conclusion is not derived from the number of witnesses called by respondent. Rather, this conclusion is based upon an analysis of all of the evidence presented. As noted above, I have given a resonable amount of weight to respondent's reference letters, since they were in addition to testimony from other character witnesses.

I also **CONCLUDE** for the reasons set forth above, that respondent has demonstrated by clear and convincing evidence her reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner's complaint seeking revocation of respondent's casino employee license and casino hotel employee registration is hereby **DENIED.**

1014

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 4, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

Dec 5, 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 07 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Resorts International Hotel, Inc., General Incident Report, dated October 30, 1983

P-2 Resorts International Casino Hotel Eviction Form re Dianne Willoughby, dated October 30, 1983

P-3 Resorts International Hotel Casino Hotel Eviction Form re Lavern Porter, dated October 30, 1983

R-1 Letter from Marvin A. Roth, M.D., dated September 28, 1984

R-2 Letter from Gene N. Schraeder, M.D., dated September 11, 1984

R-3 Letter from SherylAnne Williams, dated October 1, 1984

R-4 Letter from Joyce English, dated October 10, 1984

R-5 Letter from Ronnie Edgerton, dated October 11, 1984

R-6 Letter from Rosalyn Freeland, dated October 10, 1984

R-7 Letter from Elaine Abduh, dated October 11, 1984

LIST OF WITNESSES

FOR THE PETITIONER:

Dianne Willoughby
Burton Langweiler

1016

FOR THE RESPONDENT:

Dianne Willoughby
Reverend Raymond Gaines
Wanda Hines
James Dorn
Waverly Taylor

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-63
OAL DOCKET NO. CCC 4727-84
LICENSE NO. 43823-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. CATHY D. WOODY, Respondent.	AMENDED FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law on December 3, 1984, recommending that her casino employee license be revoked; and the respondent having filed exceptions to the initial decision on December 14, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of January 16, 1985, to affirm and adopt the said initial decision and to revoke the respondent's casino employee license; and a final order implementing this decision having been issued inadvertently dated February 15, 1984,

IT IS on this 15th day of February 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the respondent's casino employee license be and hereby is revoked based upon the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Cathy D. Woody is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that this final order supersedes the final order in this matter dated February 15, 1984; and

IT IS FURTHER ORDERED that copies of this final order be served upon Cathy D. Woody, the Division of Gaming Enforcement and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4727-84

AGENCY DKT. NO. 84-63

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,

v.

CATHY D. WOODY,
Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Cathy D. Woody, respondent, pro se

Record Closed: October 19, 1984 Decided: November 30, 1984

BEFORE **JEFF S. MASIN,** ALJ:

The Division of Gaming Enforcement (Division) seeks an order from the Casino Control Commission (Commission) revoking the casino employee license of Cathy D. Woody. Ms. Woody requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held on August 9, 1984, and a prehearing order was issued on August 17, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin on October 19, 1984 at the Ventnor Municipal Court.

THE ISSUES

As set forth in the prehearing order, the issues in this case revolve around an incident which allegedly occurred on January 23, 1984. Ms. Woody, by her own concession, found a blank money order on that date which she proceeded to deposit in her bank the next day. The Division contends that she in fact stole the money order and converted it to her own use in violation of law and that, despite the fact that the criminal charges against Mr. Woody were dismissed for lack of prosecution, the conduct involved, if it had been prosecuted, would have constituted a disqualifying offense which would have required denial of licensure, pursuant to N.J.S.A. 5:12-86(g) and 86(c).

THE EVIDENCE

The evidence presented during this hearing was minimal. The Division presented an American Express money order, payable to the order of Mark O. Rabb, in the amount of $80, dated January 24, 1984. The document contains a signature of Mark O. Rabb on the endorsement line. The Division also presented a complaint which was signed by Detective U. Mannikus, a New Jersey State Police Detective assigned to the Division of Gaming Enforcement. This complaint was filed in Atlantic City Municipal Court on January 23, 1984, and charged Ms. Woody with a violation of N.J.S.A. 2C:20-6 in that she allegedly committed a theft:

> "When, having acquired property knowing the property belonged to another and with purpose to deprive said owner, converted to her own use property known to have been lost or mislaid, same being an American Express Money Order. . . ."

The other evidence presented by the Division consisted of Detective Mannikus' police investigation report which indicated that on February 8, 1984, he had been detailed to Harrah's Casino to investigate a reported theft. The victim, one Heather Greenblatt, reported that somewhere between 7:50 and 9:15 p.m. someone had opened her locker and removed cash and an $80 American Express money order. The money order was blank. Greenblatt was employed as a blackjack dealer at Harrah's and was working at the time of the theft. According to Mannikus' report, the locker showed no signs of forced entry, including any signs of an attempt to damage the combination pad lock.

The police report further details that the money order was eventually traced by American Express and that it had been made out to Mr. Rabb and endorsed by him. Ms. Greenblatt advised that Rabb was the boyfriend of another blackjack dealer at Harrah's, respondent Cathy D. Woody. Woody is described in the police report as a friend of Greenblatt. According to the report, "Ms. Woody's locker is close to the victim's locker. It is the victim's belief that Cathy Woody may have learned victim's locker combination by watching her open the same and that Cathy Woody is the person responsible for the theft."

An interview was conducted with Ms. Woody. She signed a statement in which she indicated that she had found the money order on the floor and that on January 25, 1984, she sent her boyfriend to the MAC machine at her bank to cash it. Rabb deposited the money order. Woody claimed in her statement that she did not know that it was stolen and that if she had she would have returned it. Ms. Woody denied any knowledge of the theft of Ms. Greenblatt's money or the opening of Greenblatt's locker.

As noted above, the criminal charges against Woody were dismissed. According to Detective Mannikus' memorandum report to his supervisor in the Division of Gaming Enforcement, the matter was dismissed because on March 30, 1984, Mannikus, who was off duty, did not appear in the Atlantic City Municipal Court for the hearing of the charges. According to Mannikus there had been an insufficient notification of the scheduled hearing and he had not received the subpoena to appear in court. Judge Gennaro Consalvo dismissed the matter.

Cathy Woody testified that she could not understand why anyone would think that she had stolen the money order. She had indeed found it on the floor and did not know who it belonged to since it was not made out to anyone. She made no attempt to locate the owner of the money order. She admitted that she was aware of Harrah's policy that employees were to turn in any lost property which they found. Ms. Woody noted that she was 18 years old at the time of the incident and that she had made a bad mistake. She noted that this job was her first since graduating from high school.

DISCUSSION

The evidence presented in this case seems at most to prove that Ms. Woody did find a blank money order and did attempt to convert it to her own benefit. There is little evidence, other than inference, from which one can find that she indeed opened Greenblatt's locker and stole the money and the money order. There is no evidence to link her to the cash other than the fact that she came into the possession of the money order.

I **FIND** that Ms. Woody found the money order on the floor of the women's locker room at Harrah's and that she took it home without making any attempt to turn it in as lost property. She then attempted to deposit the money order in her bank. In doing so she attempted to deprive the rightful owner of the money order. She also violated Harrah's policy, a serious matter.

This case presents to some extent the classic question of what one does when one finds lost items. There is little doubt that had Woody turned this money order in it could have been traced to the purchaser and restored to Ms. Greenblatt. By her actions, Ms. Woody attempted to frustrate Ms. Greenblatt's possession of what was rightfully hers. Ms. Woody's conduct is inexcuseable. However, I do not believe that Ms. Woody's actions constitute a criminal violation. While she certainly may have been guilty of a civil tort, I do not believe that Ms. Woody acted out of any sense of criminality. Despite the narrow distinction between a civil wrong and a criminal offense in this type of context, I am reluctant to pin the lable of criminality on Ms. Woody's actions. Indeed, I suspect that they arose more out of a combination of greed and immaturity, but I hasten to add that I do not believe that the greed involved rose to level of a criminal offense.

Recgonizing that the distinction which I have drawn above is narrow, I must add that Ms. Woody's actions do not bespeak well of her as a candidate for continued licensure. She holds a critical position in the scheme of casino operations, a blackjack dealer. She handles extremely large amounts of money on a daily basis. She is presented with temptations throughout her working day. Her actions with respect to this incident lead me to conclude that whether as a result of immaturity, lack of character development, or other traits, she does not possess the type of good character, honesty and integrity required of one who holds such a senitive position. N.J.S.A. 5:12-90(b). While the Division did not specifically raise the good character, honesty and integrity

requirement as a basis for its objection to continued licensure in this case, I feel compelled to note my conclusion that Ms. Woody fails to meet this licensing standard. Given this fact, I cannot agree to the continued licensure of Ms. Woody. I **CONCLUDE** that she does not have the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-90(b). Although I **CONCLUDE** that the Division has failed to establish by a preponderance of the evidence that Ms. Woody engaged in an offense which would constitute a disqualifying offense under section 86(c) of the statute, I FIND that she cannot continue to hold the license due to her failure to meet the qualifying standard. N.J.S.A. 5:12-86(a). For this reason, I **CONCLUDE** that her license must be revoked.

The above conclusion is compelled by the evidence presented in this case. Although I have some reluctance in removing Ms. Woody's license in view of the limited nature of this incident, I do so with the conviction that the action is necessary. However, I believe that in the future Ms. Woody may be able to demonstrate that she has gained the necessary maturity and character development to warrant relicensure. After a reasonable passage of time, she may wish to reapply for licensure.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 30, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

December 6, 1984
DATE

Ronald J. Parker/ks
OFFICE OF ADMINISTRATIVE LAW

ks

1025

EVIDENCE LIST

On behalf of the petitioner:

P-1 New Jersey State Police Investigation Report, dated February 8, 1984 (2 pages)

P-2 New Jersey State Police Arrest Report

P-3 Atlantic City Municipal Court Complaint State of New Jersey v. Cathy Denise Woody

P-4 Statement of Ms. Woody, dated February 9, 1984

P-5 Photocopy of American Express Money Order 04-134,078,878 (3 pages)

P-6 Memorandum of August 1, 1984, from Detective U. Mannikus to Detective Sergeant First Class C. Kuhn

On behalf of respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-112
OAL DOCKET NO. CCC 7866-84
LICENSE/REGISTRATION NOS.
30785-22; 04751-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
V.	:	FINAL ORDER
BRIAN K. WORTHY,		
Respondent.	:	

This hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 1, 1985,

IT IS on this 7th day of May, 1985, ORDERED that the initial decision in this matter is modified as follows:

> In light of all the circumstances and pursuant to N.J.S.A. 5:12-91(e), it is consistent with public policy and in the interest of justice to waive the respondent's disqualification pursuant to N.J.S.A. 5:12-86, to permit him to retain his casino hotel employee registration.

IT IS FURTHER ORDERED that the casino employee license of Brian K. Worthy is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Brian K. Worthy's disqualification is waived pursuant to N.J.S.A. 5:12-91(e), permitting him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Brian K. Worthy is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Brian K. Worthy, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7866-84

AGENCY DKT. NO. 84-112

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
BRIAN K. WORTHY,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Robert Pinizzotto, Esq., for respondent

Record Closed: January 31, 1985 Decided: March 19, 1985

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On April 13, 1984, the Division of Gaming Enforcement (Division) filed a complaint seeking immediate suspension of respondent's casino employee license and casino hotel employee registration and seeking a judgment revoking respondent's license and registration. The complaint alleged that on March 26, 1984, respondent was arrested and charged with possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20a(1), in that, while engaged in the performance of his duties as an employee of Caesar's Boardwalk Regency Hotel/Casino, he was found to be in possession of a glassine packet containing cocaine. Respondent filed an answer to the complaint on May 16, 1984.

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On May 14, 1984, the Casino Control Commission (Commission) suspended respondent's license and registration. The Commission vacated the suspension order on October 19, 1984, after respondent was acquitted in municipal court. Respondent's motion to dismiss the Division's complaint was denied, and the matter was thereafter transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held, resulting in the entry of a prehearing order, dated January 9, 1985, which defined the following issues to be addressed at the hearing:

1. Can respondent demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity required for licensure by N.J.S.A. 5:12-89b(2) and 5:12-90b?

2. If respondent is found to not possess the required good character, honesty and integrity, should his license be revoked pursuant to N.J.S.A. 5:12-86a?

3. Should respondent's license and registration be revoked pursuant to N.J.S.A. 5:12-86c(4) on the basis that the allegation contained in paragraph 7 of the Division's complaint renders his licensure inimical to the policy of the Casino Control Act and to casino operations?

4. Based upon the allegations contained in paragraph 7 of the Division's complaint, should respondent's license and registration be revoked pursuant to N.J.S.A. 5:12-86g?

A hearing was held in Ventnor, New Jersey, on January 31, 1985.

FACTUAL FINDINGS

Respondent is 25 years old, married and has one child. He holds a casino employee license for a nongaming position and a casino hotel employee registration.

At the age of 18 years, he commenced working as a bar porter for Caesar's Boardwalk Regency Hotel/Casino. He was subsequently promoted to the position of

bartender, where he continued to work until his license and registration were suspended by the Commission in May 1984. He returned to work at Caesar's, as a bartender on October 20, 1984. He has worked at Caesar's continuously since that date. His position as a bartender in the hotel portion of Caesar's is a nonsupervisory position.

On March 26, 1984, after working the "grave shift" in the Rolling Chair Lounge on the third floor of Caesar's Hotel, respondent went to the locker room to change from his work uniform into his street clothes. He found a glassine packet in the pants pocket of his street clothes. The packet contained a small amount of cocaine. Respondent fully admits that the cocaine was his and that it was in his possession. He credibly testified that he was unaware that the substance was in his pants pocket when he came to work, and that he had no intention of bringing the drug to his place of employment. He had not used cocaine for an undefined period of time prior to March 26, 1984, and simply forgot that it was in his pants pocket.

The parties stipulated to the New Jersey State Police laboratory report, dated April 17, 1984, which confirms that the substance was cocaine in the amount of 0.2 grams (P-2). Respondent had been discovered in the locker room by a Caesar's security officer, who after calling for a backup on his walkie-talkie, escorted respondent to the security office and then notified the Division of Gaming Enforcement. Ultimately, the New Jersey State Police were called in, and respondent was escorted to the Division of Gaming Enforcement office, at which time he was advised of his rights (P-1). Respondent was charged with possession of cocaine in violation of N.J.S.A. 24:21-20a(1) (P-3).

After referral to the Atlantic County Prosecutor's Office, the criminal matter was remanded and downgraded to a violation of N.J.S.A. 24:21-20b (use of a controlled dangerous substance). On July 5, 1984, respondent was acquitted of the downgraded charges in the Atlantic City Municipal Court (R-1).

After respondent's termination from his job as a bartender at Caesar's as a result of the March 26, 1984 incident, he commenced employment at K-Mart where he was promoted to the position of assistant manager. After the Commission vacated the suspension of respondent's license and registration, he left his job at K-Mart and returned to work at Caesar's.

Except for the March 26, 1984 arrest, respondent has no other arrests. He has never had any grievances filed against him during his course of employment, and the only time his employment at Caesar's was interrupted was after the March 26, 1984 arrest.

Respondent has not used any drugs since his arrest.

DISCUSSION AND CONCLUSIONS OF LAW

At the hearing, both parties indicated that they had consulted with each other prior to the hearing and that they both felt that respondent's rehabilitation was an issue in this case. However, strictly speaking, the Casino Control Act provides that a registrant, pursuant to N.J.S.A. 5:12-91d, and a casino employee licensee, pursuant to N.J.S.A. 5:12-90h, may demonstrate rehabilitation prior to revocation of a license or registration if the individual has been convicted of any of the offenses enumerated in this Act as disqualification criteria. In the present case, respondent has not been convicted of any offense. Consequently, rehabilitation as specified in the Casino Control Act is not an issue.

Determining whether respondent has committed an offense which is inimical to the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4) involves an analysis which is substantially similar to the concept of rehabilitation as set forth in the Act. Before addressing the issue of inimicality, it must be determined as to whether respondent did violate N.J.S.A. 24:21-20A(1). Notwithstanding that respondent was not prosecuted of the charge of possession of a controlled dangerous substance, section 86g of the Act states that a licensee may be disqualified from licensure if he has committed any act which would constitute any offense pursuant to section 86c of the Act even if the offense has not been prosecuted under the criminal laws of the state of New Jersey. The burden of proof in demonstrating a section 86g violation is by the preponderance of the evidence. I **CONCLUDE** in light of the respondent's admission that he was in fact in possession of 0.2 grams of cocaine, which is supported by the New Jersey State Police laboratory report (P-2), that respondent did commit a violation of N.J.S.A. 24:21-20a(1). The question then arises as to whether the commission of that offense is inimical to the policy of the Casino Control Act and to casino operations. The declaration of policy located in N.J.S.A. 5:12-1b(8) states:

> Since the public has a vital interest in casino operations in Atlantic City and has established an exception to the general policy of the State concerning gaming for private gain, participation in casino operations as a licensee or registrant under this Act should be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant and upon the discharge of the affirmative responsibility of each such licensee or registrant to provide to the regulatory and investigatory authority to establish by this act any assistance and information necessary to assure that the policies declared by this Act are achieved.

While inimicality is not defined in the Casino Control Act, the Casino Control Commission has offered the following guidelines in determining whether an offense is inimical:

> Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the event surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses, which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The decision to be made in this case is difficult. Respondent has been employed in the casino industry for approximately six or seven years, apparently successfully, other than the hiatus wherein his license and registration were suspended for several months as a result of his arrest for possession of cocaine. He has no criminal record, and has only been arrested on one occasion, i.e., March 26, 1984, with those charges ultimately being downgraded and then dismissed altogether. The amount of controlled dangerous substance in respondent's possession that resulted in his arrest was a very small amount, and there is no suggestion that respondent was selling the drug or was even using it on the date of his arrest. I have accepted respondent's testimony as fact that he forgot that the cocaine was in his pants pocket when he went to work and that he has not used the drug since he was arrested. However, one of the most significant factors presented in this case, is the fact that respondent was found in a licensed casino hotel, albeit in the locker room, in possession of a controlled dangerous substance. Under no

circumstances can an employee's possession of a controlled dangerous substance in a licensed casino facility be tolerated under any circumstances, regardless of how small the amount involved, and regardless of the fact that the employee claims that he "forgot" that it was in his possession. While I am extremely sympathetic to respondent's plight and the impact that revocation of his license and registration may have upon him and his family, to condone the possession of a controlled dangerous substance in a licensed casino facility under any circumstances is clearly violative of the policy set forth in the Casino Control Act. Once the door is open to permitting the possession of a controlled dangerous substance in a licensed casino facility under some circumstances, the regulatory process will begin to erode and decay. If it is acceptable for a registrant/licensee to possess 0.2 grams of cocaine in a casino facility, the inevitable question will arise as to whether possession of 0.3 grams of cocaine is unacceptable. I **CONCLUDE** that the Casino Control Act does not permit such "line-drawing" to be done with regard to tbe issue of possession of illegal drugs in a licensed casino facility. The policy statement set forth in the Act is clear, and I therefore **CONCLUDE** that respondent's possession of 0.2 grams of cocaine (which he clearly admits belonged to him) is inimical to the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4).

N.J.S.A. 5:12-86a and 5:12-89b(2) as incorporated into 5:12-90b require a licensee to demonstrate that he possesses the requisite reputation for good character, honesty and integrity. The fact that respondent was arrested for possession of cocaine (notwithstanding that the drug charges were ultimately downgraded and then dismissed) when coupled with the fact that he admits that he was in possession of 0.2 grams of cocaine in a licensed casino facility, taints his reputation for good character, honesty and integrity. Respondent presented nothing affirmative to overcome that taint, other than the fact that he has not been convicted of any other offenses since March 1984. There were no character witnesses to testify on his behalf (he did mention at the hearing that his manager stated he could not testify on his behalf as it was against hotel policy), nor did he produce into evidence any of the letters or affidavits attesting to his good character, honesty and integrity.

Hence, having concluded that respondent's possession of a controlled dangerous substance in a licensed hotel facility on March 26, 1984, is inimical, with insufficient mitigating circumstances to overcome the inimicality, and having concluded that respondent has failed to meet his burden of proof by clear and convincing evidence that he possesses the requisite reputation for good character, honesty and integrity, regrettably, I

CONCLUDE that respondent's casino employee license and casino hotel employee registration must be revoked.

ORDER OF DISPOSITION

It is hereby **ORDERED** that respondent's casino hotel employee registration and casino employee license be hereby **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 19, 1985
DATE

Valerie H. Armstrong
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

March 19, 1985
DATE

Christina F. Meaver
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 21 1985
DATE

Ronald L. Lasky/jsc
OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS INTRODUCED INTO EVIDENCE

P-1 New Jersey State Police Investigation Report, dated March 27, 1984; New Jersey State Police Supplementary Investigation Report, dated May 2, 1984; New Jersey State Police Arrest Report, dated March 27, 1984

P-2 Request for examination of evidence; New Jersey State Police Laboratory Report, dated April 17, 1984

P-3 Complaint In the Matter of the State of New Jersey v. Brian K. Worthy, dated March 26, 1984

R-1 Complaint In the Matter of tbe State of New Jersey v. Brian K. Worthy, dated March 26, 1984

LIST OF WITNESSES

FOR PETITIONER:

None

FOR RESPONDENT:

Brian K. Worthy

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1985

PREPARED BY THE LEGAL DIVISION

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17.	Application of Galaxy Airlines for an Exemption From Casino Service Industry Licensure Pursuant to N.J.S.A. 5:12-92(c)		05/30/85 Opinion 08/05/85	27
18.	Application of Marie Giamporcaro for a Casino Employee License	OAL CCC 2010-85 Agency 85-EA-44	09/20/85	2

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
19.	Application of Vincent J. Giannuzzi, Jr., for a Casino Employee License	OAL CCC 2636-85 Agency 85-EA-86	10/18/85	291
20.	Application of Patricia Gibbs for a Casino Employee License	OAL CCC 2542-85 Agency 85-EA-82	11/26/85	298
21.	Application of Joseph B. Glasse for a Casino Employee License	OAL CCC 0321-85 Agency 84-EA-195	08/06/85	30
22.	Application of Morris Goodman for a Casino Employee License	OAL CCC 2187-85 Agency 85-EA-58	12/10/85	31
23.	State of New Jersey v. Greate Bay Hotel & Casino, Inc.	OAL CCC 2121-85 Agency 84-102	08/23/85	32
24.	State of New Jersey v. Jeffrey W. Hayes	OAL CCC 1637-85 Agency 84-438	09/12/85	35
25.	State of New Jersey v. Jorge Hernandez	OAL CCC 0036-84 Agency 83-137	09/30/85	36
26.	Application of Lance M. Hollis for a Casino Employee License	OAL CCC 4357-84 Agency 84-EA-84	08/09/85	36
27.	State of New Jersey v. Leo M. Holloway	OAL CCC 6896-83 Agency 83-268	12/04/85	38
28.	State of New Jersey v. Industrial Valley Refrigeration, Inc.	OAL CCC 7350-84 Agency 84-205	08/23/85	38
29.	State of New Jersey v. Robert Jenkins	OAL CCC 4602-84 Agency 83-147	08/05/85	40

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
30.	Application of Elmira Y. Jones for Renewal of Her Casino Employee License	OAL CCC 2042-84 Agency 84-EA-43	08/02/85	41
31.	Exclusion of Saul Kane from Casino Hotel Facilities	OAL CCC 7457-84 Agency No. 84-EL-11	11/21/85	42
32.	State of New Jersey v. Michael Patrick Kelly	OAL CCC 1319-85 Agency 85-16	12/05/85	44
33.	Application of Madeline N. Krinsky for a Casino Employee License	OAL CCC 8915-84 Agency 84-EA-167	07/09/85	45
34.	Exclusion of Philip Leonetti from Casino Hotel Facilities	(See Item No. 39 Below)		--
35.	State of New Jersey v. Oscar Llanos	OAL CCC 2902-84 Agency 83-448	07/19/85	46
36.	State of New Jersey v. Juan Maldonado and Application of Juan Maldonado for a Casino Employee License	OAL CCC 2544-85 CCC 7952-84 (On Remand) Agency 84-281, 84-EA-109	12/26/85	47
37.	Application of A. Marrucca & Sons, Inc. for a Casino Service Industry License	OAL CCC 8394-84 Agency 84-CSI-19	07/24/85	48
38.	State of New Jersey v. Edward McCafferty	OAL CCC 9141-84 Agency 84-333	09/05/85	49
39.	Exclusion of Lawrence Merlino and Philip Leonetti from Casino Hotel Facilities	OAL CCC 3313-84 CCC 1807-83; CCC 1809-83 (On Remand) Agency 82-EL-19, 82-EL-20 (Consolidated)	09/17/85 Commission Decision 09/05/85	5

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAG
40.	State of New Jersey v. Samuel A. Moffa, III	OAL CCC 737-85 Agency 82-152	09/05/85	63
41.	Application of Kevin F. Monaghan for a Casino Employee License	OAL CCC 322-85 Agency 84-EA-223	08/15/85	64
42.	State of New Jersey v. Cynthia M. Needham	OAL CCC 1713-85 Agency 85-88	12/20/85	65
43.	Application of New Jersey State News Co., Inc. for a Casino Service Industry License	OAL CCC 5569-84 Agency 84-CSI-6	08/06/85	66
44.	State of New Jersey v. Charles E. Newland	OAL CCC 7565-84 Agency 84-132	08/09/85	67
45.	State of New Jersey v. Beverly L. Newton	OAL CCC 550-84 Agency 83-271	07/19/85	68
46.	State of New Jersey v. Herminio Nunez	OAL CCC 2897-84 Agency 84-56	09/30/85	69
47.	State of New Jersey v. Playboy-Elsinore Associates, t/a Playboy Hotel and Casino of Atlantic City; Joanne Marie Rogers, Cage Manager; Christopher R. Gibbins, Casino Comptroller; Willard C. Howard, Jr., Former Vice-President of Casino Operations; and Henry M. Applegate, III, Vice-President of Financial Services	OAL CCC 04557-83 Agency 83-16	10/31/84 Commission Decision 10/10/84	70
48.	State of New Jersey v. Ruben E. Plaza	OAL CCC 7562-84 Agency 84-248	07/12/85	7
49.	State of New Jersey v. Miguel Angel Posada	OAL CCC 6753-84 CCC 7715-83 (On Remand) Agency 83-279	07/12/85	7

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAG
50.	Applications of Ronald P. Rahhal for a Casino Employee License and Studio 7 Tours for a Casino Service Industry License	OAL CCC 8070-84 Agency 84-EA-168; 84-CSI-16	09/23/85	78
51.	State of New Jersey v. Michael Rattigan	OAL CCC 1421-85 Agency 84-295	08/09/85	80
52.	State of New Jersey v. Resorts International Hotel, Inc.	OAL CCC 4604-84 Agency 83-405	07/29/85	80
53.	Application of James R. Sadie for a Casino Employee License	OAL CCC 04462-84 Agency 84-EA-86	10/18/85	82
54.	State of New Jersey v. Iluminado Matos Santiago, a/k/a Iluminado Matos	OAL CCC 7743-84 Agency 84-301	08/01/85	84
55.	State of New Jersey v. Zackary D. Saunders	OAL CCC 636-85 Agency 83-257	12/23/85	85
56.	State of New Jersey v. Glenn Scalia	OAL CCC 1417-85 Agency 85-41	10/04/85	86
57.	State of New Jersey v. Kerry L. Small and Vicki L. Small	OAL CCC 2058-85 and CCC 2339-85 (Consolidated) Agency 85-91(b) and 85-91(a) (Consolidated)	10/21/85 Kerry L. Small 10/17/85 Vicki L. Small	87
58.	State of New Jersey v. John A. Spadavecchia	OAL CCC 1710-85 Agency 85-87	10/17/85	88
59.	Exclusion of Albert Sulla from Casino Hotel Facilities	OAL CCC 03401-84 Agency 84-EL-3	12/13/85	89

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAG
60.	State of New Jersey v. Roy Teller	OAL CCC 4776-84 Agency 83-144	12/04/85	91
61.	Application of Curtis D. Tiegs for a Casino Key Employee License	OAL CCC 4836-84 Agency 84-EA-99	10/02/85	92
62.	Application of Alfred A. Tomaselli, Jr. for a Casino Employee License	OAL CCC 2474-85 Agency 85-EA-85	10/07/85	93
63.	Exclusion of Alfred J. Totoro from Casino Hotel Facilities	OAL CCC 8263-84 Agency 84-EL-42	07/31/85	94
64.	State of New Jersey v. David Tress	OAL CCC 03186-85 Agency 85-167	10/15/85	96
65.	State of New Jersey v. Rodney J. Towns	OAL CCC 1066-85 Agency 83-220	08/01/85	97
66.	State of New Jersey v. Jeffrey L. Troxell	OAL CCC 738-85 Agency 83-182	07/16/85	98
67.	State of New Jersey v. Francis Vecchio and Application of Francis Vecchio for a Casino Employee License	OAL CCC 1076-85 Agency 84-441; 84-EA-156	11/25/85	99
68.	State of New Jersey v. Patricia Ida Verruno	OAL CCC 1716-84 Agency 83-243	07/31/85	100
69.	Application of Audrey M. Vitali for a Casino Employee License	OAL CCC 8914-84 Agency 84-EA-169	07/09/85	101
70.	State of New Jersey v. William E. Waters	OAL CCC 5262-84 Agency 84-178	12/03/85	10:

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAG
71.	Application of Charles M. Weinberg for a Casino Employee License	OAL CCC 8011-84 Agency 84-EA-132	07/03/85	103
72.	State of New Jersey v. Elliott L. Winston	OAL CCC 2807-85 Agency 85-139	12/20/85	105
73.	Application of Harold C. Woodward for a Casino Employee License	OAL CCC 1065-85 Agency 85-EA-6	08/28/85	106

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-CSI-5
OAL DOCKET NO. CCC 7202-84
APPLICATION NO. 472-70

APPLICATION OF A TO Z MAINTENANCE CORPORATION FOR A CASINO SERVICE INDUSTRY LICENSE

FINAL ORDER

A hearing having been held in this matter before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 3, 1985,

IT IS on this 1ST day of AUGUST 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon A to Z Maintenance Corporation, the Division

of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7202-84
AGENCY DKT. NO. 84-CSI-5

A TO Z MAINTENANCE CORPORATION,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Joseph T. Wilkins, Esq., for petitioner

Patricia Wild, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 10, 1985 Decided: May 28, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of A to Z Maintenance Corporation for licensure as a casino service industry, pursuant to section 92c of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and N.J.A.C. 19:43-1.3(c). The Division of Gaming Enforcement has objected to the petitioner's application for licensure. The issue to be determined in this matter is as follows:

> Whether the petitioner, with specific reference to its financial responsibility and tax liabilities, the revocation of its authority to conduct business in New Jersey, and the arrest and conviction

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record of Samuel Williams, has established by clear and convincing evidence its reputation for good character, honesty and integrity, within the meaning of sections 92c and 89b of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated November 23, 1983. The petitioner requested a hearing on its license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on September 24, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in this matter on October 25, 1984, and, following an adjournment for good cause, the hearing was held on January 10, 1985. At the conclusion of the hearing, counsel for the petitioner requested that the record be held open to permit him to submit additional written evidence in the form of letters of reference and recommendation. Following receipt of the requested submission, the record in this matter closed on April 10, 1985, when it was determined that the Division of Gaming Enforcement had no objection to its admission into evidence.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a custodial services corporation with offices located in Glassboro and Atlantic City, New Jersey. The corporation employees perform general building cleaning and janitorial services, as well as carpet, duct and exhaust fan cleaning. The firm speciality is window cleaning, including windows that require scaffolding to complete the job. Among others, the petitioner's customers include Sun Oil, South Jersey Gas, Atlantic Electric, as well as the Sands, Bally's, and Caesar's casino hotels in Atlantic City.

The president of the petitioner corporation is Samuels Williams, a 58 year old resident of Sicklersville, New Jersey. Mr. Williams owns 60% of the petitioner corporation. His wife, Viola, owns the remaining 40% of the corporation. The petitioner employs between 400 and 450 people, of whom at least 95% are members of various minority groups. Mr. Williams described his business as labor intensive and he indicated that his non-union employees are entry level, unskilled individuals who may not have many employment opportunities beyond custodial work (exhibit P-1). The petitioner corporation

presently meets the eligibility and ownership criteria for the United States Small Business Administration Section 8(a) Assistance for disadvantaged persons. This certification provides the petitioner with the opportunity to locate contracting opportunities from the federal government (exhibit P-2).

Testifying on behalf of the petitioner corporation, Samuel Williams stated that he first became involved in the cleaning business when his father retired from his employment at the Philadelphia Navy Yard and formed Williams General Cleaning Service (hereinafter Williams General). At first, the main service provided was window cleaning. The business grew and, as more employees were hired, floor cleaning service was added. When the elder Williams retired, Samuels Williams took over the operation of Williams General, which had contracts in the state of New Jersey. In order to obtain contracts in Pennsylvania, Samuel Williams formed the petitioner corporation.

At the height of its business in the late 1960's, Williams General had gross annual revenues of approximately $100,000. Samuel Williams candidly explained that he has an eighth grade education and that his father had only a sixth grade education. Samuel Williams and his wife attempted to personally handle the Williams General tax accounting and he candidly testified that they missed paying the Williams General withholding taxes on time. As a result, the state of New Jersey voided the charter of Williams General for nonpayment of state taxes on January 17, 1968 (exhibit R-4).

Williams General continued to do business until 1979. Although it had an outstanding tax liability, Williams General was never charged with avoiding, evading or falsifying its tax liability. As the business of the petitioner corporation grew, Samuel Williams determined to dissolve Williams General. However, he felt it was a good business judgment to personally assume the tax liability of Williams General, even though he was not obligated to do so. In particular, Mr. Williams felt that assuming the tax liability of Williams General would enable him to obtain credit to expand the petitioner corporation.

It was the testimony of Mr. Williams that A to Z Maintenance Corporation has evolved from dealing with relatively small customers with short term contracts to large customers with long term contracts. Although the petitioner corporation bills monthly, payment is received as customers choose to pay. From time to time, the payroll must be financed because customers have not yet paid their bills. With over 400 employees, the

petitioner's payroll exceeds $300,000 per month. As the petitioner corporation grows, it becomes more likely that it is periodically in debt as a result of carrying the financing on the payroll for contracts which have not yet been paid by customers. It has also been the policy of the petitioner to keep trained supervisors on the payroll between contracts in order to not loose good employees. This policy creates an additional expense for the corporation.

Because the petitioner corporation was required to periodically finance its payroll pending payment by customers, and because employees were carried on the payroll between contracts, the corporation became seriously in arrears on its payroll taxes. As a result, the authorization of the corporation to transact business in the state of New Jersey was revoked for nonpayment of state taxes on February 23, 1983 (exhibit R-3). This revocation merely affected the legal status of the corporation in the state of New Jersey and it has not actually prevented the corporation from continuing to do business in New Jersey.

Last year the gross receipts of the petitioner exceeded $7,000,000. In order to satisfy the outstanding tax liability, it became imperative for the petitioner to find additional ways to finance its current payroll. According to Samuel Williams, the petitioner's line of credit with Girard Bank has grown from $25,000 to $200,000. The petitioner's line of credit with First Jersey National Bank has grown from $25,000 to $750,000. In return for the financing, the petitioner has assigned customer receipts to the financial institutions. In addition, the petitioner's certification as a minority contractor under the Small Business Administration program has provided backing to perform contracts and receive additional financing. Mr. Williams testified sincerely that a large percentage of the petitioner's private sector business comes from the casino industry and that the loss of this business would probably cause the petitioner to loose its minority contractor certification from the Small Business Administration. In turn, this would probably cause about 150 to 200 of the petitioner's employees to lose their jobs.

Mr. Williams testified that his desire to improve the financial management of the petitioner led to the retaining of a firm to do an extensive financial management survey. Among the survey recommendations was the suggestion that the petitioner hire a comptroller. Yemi Koyejo, a graduate of the Economic School in Nigeria, was hired by the petitioner as its comptroller. Mr. Koyejo critically evaluated 50 contracts on a cost

analysis basis. In addition, he had developed a marketing strategy for the petitioner and has added three employees to deal with financial management.

Mr. Koyejo testified that the petitioner now has accounts receivable of approximately 1.2 million dollars per month. With bank financing, the petitioner is able to keep its obligations current. The New Jersey back taxes for Williams General have been paid and the federal tax obligation of Williams General is being paid on an installment basis. The back New Jersey taxes for the petitioner corporation are being paid on monthly installments of $8,000 and the petitioner is meeting its current tax obligations. The petitioner is current on all of its installment payments and its corporate certificate will be restored when the arrearage has been satisfied. It is the professional opinion of Mr. Koyejo that the petitioner's financial management system is now adequate to handle the petitioner's rapid growth. The petitioner is also prepared to develop a new computerized financial management system to match further growth. Thus, it is the opinion of Mr. Koyejo, which opinion is shared by Mr. Williams, that the petitioner corporation is now financially solvent and stable.

Samuels Williams testified with notable candor and sincerity concerning his past and his present life. He acknowledged that he was charged with armed robbery in 1943, when he was only 16 years old. Mr. Williams acknowledged that he had been a member of a youth gang in West Philadelphia, Pennsylvania, and that he was arrested following his chasing a rival gang member while carrying a weapon. Upon his conviction, Mr. Williams served a five year prison sentence at Eastern State Penitentiary, after which he was released at the age of 21. Mr. Williams received a suspended sentence on a charge of atrocious assault and battery in 1951. An assault charge against Mr. Williams in 1959 was dismissed. His last arrest occurred in 1964, when he received a disorderly persons charge for participating in a crap game. Mr. Williams explained that his employees were playing craps and he was present, trying to get them to leave so they could go to work in the morning. Nevertheless, Mr. Williams was convicted and ordered to pay a fine of $50.

Samuel Williams has no arrests since 1964. In 1971, following the death of his father, Samuel Williams became actively involved in his church. First he became a member of the trustee board, and later he became chairman of the planning and building committee. Samuel Williams is also a management trustee for an employee pension fund. In order to hold this position, Mr. Williams must be bonded and qualified on the basis of honesty and integrity. Numerous letters from satisfied customers attesting to the

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exemplary performance of Samuel Williams and the employees of the petitioner corporation were admitted into evidence as exhibit P-7. In addition, letters from Leon H. Sullivan, Minister of the Zion Baptist Church and William M. Dalton, Mayor of the Borough of Glassboro, New Jersey, which attest to the outstanding business ability of Samuel Williams and to his excellent reputation for good character, honesty and integrity, were admitted into evidence as exhibit P-22.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 92c of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and N.J.A.C. 19:43-1.3(c), an applicant for a casino service industry license which offers goods or services not directly related to casino gaming activities must establish, by clear and convincing evidence, its reputation for good character, honesty and integrity. In the present matter, the petitioner corporation must demonstrate that it possesses these requisite qualifications for licensure with specific reference to its financial responsibility and to the good character of its principal owner, Samuel Williams.

It is undisputed that the petitioner corporation has an outstanding tax liability to the state of New Jersey. However, it is also undisputed that the petitioner corporation is meeting its present tax obligations and is current on its installment payments to satisfy its tax arrearages. The petitioner corporation has experienced substantial growth under the direction of Samuel Williams and substantial lines of credit from financial institutions are available. In addition, the backing of the Small Business Administration is available to the petitioner corporation as a qualified minority contractor. The relevant and credible evidence in the record clearly establishes the financial solvency, responsibility and stability of the petitioner corporation.

It is undisputed that Samuel Williams has a criminal conviction in his distant past; he was convicted of armed robbery in 1943 when he was only 16 years old. As a result of this conviction, Samuel Williams served a five year prison term. His last arrest occurred over 20 years ago when he was charged with a disorderly persons offense. Since that time, Samuel Williams has achieved outstanding success as a businessman, by any reasonable standard of evaluation. Perhaps his success is all the more remarkable because

of how far he had to come and because of the limited opportunities for success which might be available to a minority businessman. In any event, the testimony of Samuel Williams was candid and sincere and believable in every regard. That he has overcome significant roadblocks to success is obvious, and it is clearly established in the record that he is a man of good character, honesty and integrity.

Based upon the undisputed facts in this matter, the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner has affirmatively demonstrated, by clear and convincing evidence, that it possesses the degree of good character, honesty and integrity requisite for licensure as a casino service industry, within the meaning of N.J.S.A. 5:12-92(c) and N.J.A.C. 19:43-1.3(c).

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of A to Z Maintenance Corporation for a casino service industry license be granted.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 28, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 31, 1985
DATE

Bernadette DiFrancesco
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 04 1985
DATE

Ronald L. Parker/pmb
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1	Minority composition of employees
P-2	Letter from the SBA, dated July 22, 1976
P-3	Letter from the SBA, dated January 28, 1983
P-4	Letter from the Division of Taxation, dated December 5, 1983
P-5	Letter from the Division of Taxation, dated May 10, 1984
P-6	N.J.S.A. 14A:13-11
P-7	Nine letters of reference
P-8	Letter to the Division of Taxation, dated November 16, 1983
P-9	Balance sheet, dated March 31, 1984
P-10	Line of credit agreement, dated March 16, 1983
P-11	Letter to the Casino Control Commission, dated October 4, 1983
P-12	Letter from the Division of Taxation, dated October 25, 1984
P-13	Quarterly Federal Tax Return, dated January 31, 1984
P-14	Line of credit letter, dated September 21, 1984
P-15	Current tax status, dated November 5, 1984
P-16	Financial management letter, dated November 28, 1984
P-17	Philadelphia Naval Base Contract Cost Analysis
P-18	Financial management consultation letter, dated December 4, 1984
P-19	Resume of Yemi Koyejo
P-20	Loan agreement, dated December 24, 1984
P-21	Loan and security agreement
P-22	Four letters of reference

FOR THE RESPONDENT:

R-1	Certified record of 1943 conviction
R-2	Certificate of debt
R-3	Revocation for nonpayment of state taxes
R-4	Revocation for nonpayment of state taxes
R-5	Request for criminal history record and FBI rap sheet
R-6	Letter of explanation, dated July 18, 1980

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WITNESSES

FOR THE PETITIONER:

Samuel Williams
Yemi Koyejo

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-142
REGISTRATION NO. 49551-40
OAL DOCKET NO. CCC 8968-84
CCC 4323-84 (On Remand)

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

RODERICK B. ADKINS

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 12, 1985;

IT IS on this 12 day of JULY 1985, ORDERED that the initial decision is modified as follows:

> The respondent is not disqualified from casino hotel employee registration based upon his conviction on May 28, 1982, for burglary (third degree) contrary to N.J.S.A. 2C:18-2. Pursuant to N.J.S.A. 5:12-86(c)(1), a violation of N.J.S.A. 2C:18-2 is not an automatic disqualifying offense unless it rises at least to the level of a crime of the second degree.

IT IS FURTHER ORDERED that the casino hotel employee registration of Roderick B. Adkins is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Roderick Adkins is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Roderick B. Adkins, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

F I L E D

MAY 1 1985

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION
OAL DKT. NO. CCC 8968-84
CCC 4323-84 On Remand)
AGENCY DKT. NO. 84-142

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,

v.

RODERICK B. ADKINS,
Respondent.

Frances Sundheim, Deputy Attorney General, on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Roderick B. Adkins, respondent, pro se

Record Closed: March 19, 1985 Decided: April 30, 1985

BEFORE **RALPH J. TOLOMEO**, ALJ:

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on May 7, 1984, seeking judgment revoking the respondent's casino hotel employee registration, pursuant to the provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The issues to be determined in this matter are as follows:

(a) Whether or not the respondent is disqualified from licensure pursuant to N.J.S.A. 5:12-86C due to certain alleged convictions for theft by unlawful taking and burglary;

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(b) Whether or not respondent is disqualified for licensure for his failure to disclose said conviction pursuant to N.J.S.A. 5:12-86(b);

(c) Whether or not respondent can establish that he has been rehabilitated pursuant to N.J.S.A. 5:12-90H and 91D as to his alleged convictions.

PROCEDURAL HISTORY

Upon the filing of the complaint by the Division of Gaming Enforcement with the Casino Control Commission, respondent, by letter received by the Casino Control Commission on June 7, 1984, requested a hearing. The matter was then transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Thereafter, and upon proper notice, a prehearing conference was scheduled for August 6, 1984, at the Office of Administrative Law. On that date, no one appeared on behalf of respondent at which time the administrative law judge assigned to the matter concluded that the respondent had abandoned his request for a hearing. Subsequently, the initial decision was filed with the Casino Control Commission on October 1, 1984.

Thereafter, respondent requested a second opportunity for a hearing and by Order of the Casino Control Commission dated December 12, 1984, the matter was remanded to the Office of Administrative Law for hearing on all issues raised in the complaint.

On receipt of this remand, a prehearing conference was held in this matter via telephone at respondent's request on February 1, 1985, and a hearing was conducted on March 19, 1985, at Brigantine, New Jersey.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 22-year-old resident of Atlantic City, New Jersey, and is currently registered as a casino

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hotel employee, registration number 49551-40. He was previously employed as a stock person by the Claridge Casino Hotel from August 1983 through September 1984 when he was terminated for being in an unauthorized area. Since that time he has been working at odd jobs.

It is undisputed that the respondent was convicted on May 28, 1982, on two counts of burglary in the third degree, contrary to N.J.S.A. 2C:18-2 and two counts of theft by unlawful taking, third degree, contrary to N.J.S.A. 2C:20-3, under Indictment 1369-81. These offenses involved respondent's burglary of residences on October 1 and November 9, 1981, in Winslow Township, New Jersey. The proceeds of the burglaries valued in excess of $2,800. The sentences imposed consisted of three years' probation, with conditions that the respondent be incarcerated for three months, that he render 300 hours of community service and that he pay a Violent Crimes Compensation Penalty of $25 as to each count, all other conditions being concurrent.

Respondent testified that these criminal activities occurred when he was 19 years of age and that he has completed his probation satisfactorily. When respondent completed the Personal History Disclosure Form (PHDF) (Exhibit P-2) on August 30, 1983, he answered "No" to Question No. 8, which asks, "Have you ever been convicted of a crime or disorderly person's offense in this state or any other jurisdiction?"

Thereafter, Agent John Lugo, assigned to the Casino Investigations Bureau, Employee Licensing Unit, conducted an investigation of respondent. He testified that he obtained information regarding respondent alleging a number of criminal charges that were unanswered and further determined that respondent was convicted of a number of charges. Agent Lugo also reviewed respondent's PHDF. Thereafter, Agent Lugo contacted respondent and after Agent Lugo had identified himself and advised respondent that he was conducting an investigation of respondent's application an interview was conducted over the telephone. Agent Lugo testified that he read Question No. 8 to respondent and asked him if he remembered how he had answered that question. Agent Lugo testified that he further apprised respondent of the language on the front of the PHDF, which states: "Failure to answer any questions completely and truthfully will result in the denial of your license application." Agent Lugo testified that respondent stated that, "He didn't think the crimes that he committed and was convicted of were serious enough to admit to any application."

Respondent testified that he had admitted to Agent Lugo that he had committed the crime and that he had asked Agent Lugo if he thought it was serious enough that his license would be taken away from him. Respondent further testified that he had completed his term of probation imposed by the sentencing court. Respondent further testified that although he was aware that he could present witnesses and documents regarding his rehabilitation, he had nothing to offer. Respondent then went on to explain that the reason he had lied on the application was for the simple fact that he wanted to get a job and that the casino job was the fastest one he could get. He also testified that for the past three years he has been in absolutely no trouble. All of the preceding evidence and testimony is essentially undisputed, and I **FIND** it believable. Therefore, it is **FOUND** as **FACT.**

CONCLUSIONS OF LAW

The provisions of the Casino Control Act provide that participation in casino operations as a registrant as a casino hotel employee is a revocable privilege conditioned upon the proper and continued qualification of the registrant. Section 129(1) of the Act authorizes revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration. Pursuant to Sections 91B and 86C of the Casino Control Act, the Commission may revoke, suspend, limit or otherwise restrict registration of any registrant automatically disqualified on the basis of his conviction of an offense enumerated as a disqualifier under the Act. It is undisputed that the respondent was convicted of two counts of burglary in the third degree contrary to N.J.S.A. 2C:18-2 and two counts of theft by unlawful taking, violations of N.J.S.A. 2C:20-3. These convictions are for offenses which are specifically enumerated in the Act as disqualifiers, pursuant to Section 86C. Therefore, I **CONCLUDE** that the respondent's convictions for these offenses permit the revocation of his registration, pursuant to Sections 86C, 91B and 129 of the Casino Control Act.

Pursuant to Section 91D of the Act, no casino hotel employee registration shall be revoked on the basis of a conviction of an offense which warrants disqualification provided the registrant can affirmatively demonstrate his rehabilitation. In this matter, it is obvious that the unlawful entry and theft from two residences acquiring in excess of $2,800 therefrom are serious offenses. They occurred within five weeks of each other at a time when the defendant was 19 years of age. Further, respondent was discharged from the Claridge Hotel and Casino in September 1984 when he was found to be in an

unauthorized area. He did not seek any casino employment thereafter. Respondent has not offered any other evidence regarding his rehabilitation except that he has completed his probationary term, and he has offered no other information from his probation officer or any other recommendations from any other source although he was aware that he had the burden and responsibility of doing so.

Under all circumstances, I **CONCLUDE** that the respondent has not affirmatively demonstrated his rehabilitation within the meaning of Section 91D. Further, it is undisputed that the petitioner failed to reveal his record of criminal convictions on his PHDF. When questioned by Agent Lugo, he wanted to know only whether or not he would lose his registration. In his testimony at the trial, he acknowledged that he intentionally lied because he needed to get the job. This occurred at the end of the second year of his three-year probationary term. From all of the facts in evidence presented, I **CONCLUDE** that the respondent did intentionally fail to disclose facts material to his qualifications for registration within the meaning of N.J.S.A. 5:12-91B and N.J.S.A. 5:12-86B.

ORDER OF DISPOSITION

According, it is **ORDERED** that the registration of Roderick B. Adkins as a casino hotel employee be and is hereby **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 30, 1985
DATE

Ralph J. Tolomeo
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

May 1, 1985
DATE

Toni Dori
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 03 1985
DATE

Ronald L. Baker/sko
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Certified copy of Indictment, Judgment of Conviction and Order for Commitment, Roderick B. Adkins

P-2 Personal History Disclosure Form, Roderick B. Adkins

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-72
APPLICATION NO. 54545-21
OAL DOCKET NO. CCC 2193-85

APPLICATION OF ERIC A. ANDERSON :

FOR A CASINO EMPLOYEE LICENSE :

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 6, 1985,

IT IS on this 4th day of December 1985, ORDERED that the initial decision in this matter is modified as follows:

> The theft or attempted theft of moveable property rightfully belonging to his employer, Playboy Casino Hotel, warrants the disqualification of Eric A. Anderson pursuant to sections 86(c)(4) and (g) of the Casino Control Act.

IT IS FURTHER ORDERED that the application of Eric A. Anderson for a casino employee license be denied based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Eric A. Anderson is prohibited from applying for any license, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that this action shall not prevent Eric A. Anderson from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Eric A. Anderson, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2193-85
AGENCY DKT. NO. 85-EA-72

ERIC A. ANDERSON,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW & PUBLIC SAFETY,
Respondent.

Eric A. Anderson, petitioner, pro se

Frances L. Sundheim, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: August 29, 1985 Decided: September 26, 1985

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the recommendation of the Division of Gaming Enforcement (Division), dated March 8, 1985, that the respondent not be licensed as a casino employee (security employee), pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Based on this recommendation, the Casino Control Commission informed the petitioner that there was a substantial possibility that his licensure application would be denied. Mr. Anderson requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held by way of a telephone conference call on May 24, 1985, and at that time the parties agreed that the issues in this matter are:

(a) Whether the petitioner is disqualified from licensure because of an alleged criminal action on January 17, 1984, which rendered his licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

(b) Whether the petitioner can show that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2).

(c) Whether the petitioner can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90h.

The hearing was held on August 29, 1985, in the Atlantic County Civil Courthouse, Atlantic City, New Jersey, and the record in the matter closed on that date.

I **FIND** that the facts in this matter are not in dispute. On January 17, 1984, Jack A. Scibona, a security officer employed by Playboy Hotel and Casino (known as the Atlantis Hotel and Casino) was conducting a routine check of employees leaving the premises (R-1). Mr. Scibona found two steaks in the petitioner's duffel bag. Mr. Anderson stated that although he did not have a property pass for the steaks, his supervisor, Carmen Bannon, had authorized him to take the steaks. Paul Gamble, the executive chef, told Mr. Scibona that the petitioner was not authorized to take the steaks and this was confirmed on the following day by Mr. Bannon. Mr. Anderson was fired and permanently barred from the premises of the Playboy Hotel and Casino (R-1). Prior to this incident, the petitioner had worked at the Playboy Hotel and Casino as a butcher for approximately two and a half years.

Mr. Anderson is currently registered as a casino hotel employee and the Division is not now recommending the revocation of his registration. For approximately eight months, Mr. Anderson was employed by the Sands Hotel and Casino as a cook and he is presently on temporary disability due to a broken leg sustained during a car accident. Mr. Anderson is 25 years old and has a dependent child to support.

At the prehearing conference, I advised Mr. Anderson that he would have to show that he was a person of good character, honesty and integrity, and that if he did not contest the allegations relating to the January 17, 1984 incident, he would also have to show that he has been rehabilitated. Also at the prehearing conference, I advised Mr. Anderson that he should arrange to have witnesses or letters attesting to his good character, honesty and integrity and his rehabilitation. At the hearing, Mr. Anderson stated that he recalled this conversation but that he had no witnesses or letters, and that he did not want additional time to procure such letters.

On his own behalf, Mr. Anderson stated that he had lived in the Atlantic City area for his whole life and that he wanted a casino license so that he could get a better job.

In closing, Ms. Sundheim stated that it is the Commission's policy that any criminal action on the premises of a casino renders licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:86c(4). Further, she stated that the petitioner has not shown that he is a person of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) nor has he shown that he has been rehabilitated as provided for by N.J.S.A. 5:12-90h.

I agree with Ms. Sundheim and I **CONCLUDE** that the licensure of the respondent would be inimical to the policies of the Casino Control Act and that the petitioner has not shown that he is a person of good character, honesty and integrity or that he has been rehabilitated since the incident on January 17, 1984.

Therefore, I **ORDER** that this matter be **DISMISSED** and the that the licensure application of Eric A. Anderson be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 26, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9/30/85
DATE

Barbara Stride
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 1 1985
DATE

Ronald J. Parker R.S.
OFFICE OF ADMINISTRATIVE LAW

ml/E

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE RESPONDENT:

R-1 Playboy Hotel & Casino Investigation Report prepared by Jack A. Scibona, Playboy Hotel & Casino Supplemental Investigation Report prepared by Jack A. Scibona and a warning issued to Eric A. Anderson on January 20, 1984

WITNESSES:

FOR THE PETITIONER:

Eric A. Anderson

FOR THE RESPONDENT:

Jack A. Scibona

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-55
OAL DOCKET NO. CCC 4356-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	:	FINAL ORDER
v.	:	
CARL ALLEGOOD, LINDA ENNIS, BETTY JARRETT, MICHAEL FAYAD, CHESTER GLASS, WALTER SHAUL, JOHN MANLEY, JOHN DOMI, ELLIS MCMILLAN, RUSSELL GIUFFRIDA, CARL WILSON, GERALD ADES, RICHARD ULLNER AND TERRY WELBORN,	:	
Respondents.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of a proposed stipulation of facts and settlement agreement resolving Count V of the complaint which pertains to respondent Chester Glass; and the Commission having considered the entire record of the proceedings at its public meeting of September 24, 1985,

IT IS on this 15th day of October 1985, ORDERED that the proposed stipulation of facts and settlement agreement is approved and incorporated herein; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-129(8), respondent Chester Glass is reprimanded for having engaged in

junket activities without proper licensure on the dates specified in the settlement agreement in violation of N.J.S.A. 5:12-102 and N.J.A.C. 19:49-2.1 et seq., and

IT IS FURTHER ORDERED that this reprimand shall be made a permanent part of the license file of Chester Glass; and

IT IS FURTHER ORDERED that copies of this final order shall be served upon the respondent and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

WALTER N. READ, CHAIRMAN

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-55
OAL DOCKET NO. CCC 4356-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	:	FINAL ORDER
v.	:	
CARL ALLEGOOD, LINDA ENNIS, BETTY JARRETT, MICHAEL FAYAD, CHESTER GLASS, WALTER SHAUL, JOHN MANLEY, JOHN DOMI, ELLIS MCMILLAN, RUSSELL GIUFFRIDA, CARL WILSON, GERALD ADES, RICHARD ULLNER AND TERRY WELBORN, Respondents.	:	

A hearing on the complaint with respect to respondents Michael Fayad, Walter Shaul, Ellis McMillan, Carl Wilson, Gerald Ades, Richard Ullner and Terry Welborn having been held before the Office of Administrative Law; and a partial initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of September 24, 1985,

IS IS on this 15th day of October 1985, ORDERED that the partial initial decision of the Office of Administrative Law is affirmed and incorporated herein; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-129(8), respondents Michael Fayad, Walter Shaul, Ellis McMillan, Carl Wilson, Gerald Ades, Richard Ullner and Terry Welborn are reprimanded for having engaged in junket activities without proper licensure on the dates specified in the initial decision in violation of N.J.S.A. 5:12-102 and N.J.A.C. 19:49-2.1 et seq; and

IT IS FURTHER ORDERED that this reprimand shall be made a permanent part of the license file of each of the aforementioned respondents; and

IT IS FURTHER ORDERED that copies of this final order shall be served upon the named respondents, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

WALTER N. READ, CHAIRMAN

BY: Dennis Daly

Dennis Daly
Senior Assistant Counsel

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

PARTIAL

INITIAL DECISION

OAL DKT. NO. CCC 4356-84

AGENCY DKT. NO. 84-55

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

CARL ALLEGOOD, LINDA ENNIS, BETTY JARRETT, MICHAEL FAYAD, CHESTER GLASS, WALTER SHAUL, JOHN MANLEY, JOHN DOMI, ELLIS MC MILLAN, RUSSELL GUIFRIDA, CARL WILSON, GERALD ADES, RICHARD ULLNER, AND TERRY WELBORN,

Respondents.

Lee D. Gottesman, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Charles A. Matison, Esq., for respondents Fayad, Glass, Shaul, Wilson, Ades, Ullner, and Welborn (Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, attorneys)

Ellis McMillan, respondent, pro se

Record Closed: June 12, 1985 Decided: August 12, 1985

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BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on February 21, 1984, as amended, which charges the respondents with having acted as junket representatives while failing to be in compliance with licensing requirements, in violation of section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and N.J.A.C. 19:49-2. The issues to be resolved in this matter are as follows:

1. Whether any of the respondents has performed the functions of a junket representative while not in compliance with the licensing requirements of section 102 of the Casino Control Act and N.J.A.C. 19:49-2, and if so, whether this conduct demonstrates such a lack of good character, honesty and integrity, within the meaning of sections 89b(2), 90b and 102b of the Act, as to require judgment that the respondent is unqualified for licensure, pursuant to section 129 of the Act.

2. Whether such conduct, if established, requires judgment imposing a monetary penalty, or some other appropriate sanction, pursuant to section 129 of the Act.

PROCEDURAL HISTORY

On February 21, 1984, the Division of Gaming Enforcement filed with the Casino Control Commission its complaints in this and two related matters (State v. Adamar of New Jersey, Inc., et al, OAL Dkt. No. CCC 4354-84 and State v. Gary Eilenberg, et al, OAL Dkt. No. CCC 4355-84). Amendments to the complaint were filed on March 20 and April 17, 1984. Answers to the complaint were filed by the respondents and on June 14, 1984, the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Prehearing conferences in this and the two related matters were held on July 16, 1984, and February 13, 1985. After it was determined that the matters should not be consolidated for hearing, the hearing in this matter was held on June 10, 11 and 12, 1985.

Respondents Allegood, Ennis, Jarrett, Domi, and Guifrida did not appear at the hearing. Pursuant to N.J.A.C. 1:1-8.2, these respondents are being given an opportunity to explain why they did not appear and why it should not be concluded that they have abandoned their right to a hearing. Respondent Guifrida has stated in writing that a family emergency prevented his appearance and his explanation establishes good cause for the rescheduling of a hearing on that aspect of the complaint which pertains to him.

At the commencement of the hearing, counsel for the Division of Gaming Enforcement and for respondent Chester Glass stated that a stipulation of settlement concerning the Division's complaint against Mr. Glass would be filed directly with the Casino Control Commission. Finally, it should be noted that service of the complaint upon respondent John Manley has never been effectuated and he did not enter an appearance at the hearing.

FINDINGS OF FACT

Amendments to section 102 of the Casino Control Act, concerning junkets and complimentary services, became effective on January 27, 1983. On that date, it became mandatory that an individual performing the functions of a junket representative be licensed as a casino employee and be employed by a licensed casino or junket enterprise, or have an additional license endorsement as a junket representative, sole owner/operator. Prior to January 1983, "casino marketing activity," which involved the procurement of players who received complimentary services valued at less than $200, would be conducted by "field agents." According to the testimony of Senior Applications Analyst Donald E. Hamer, an employee of the Casino Control Commission, a person who had filed with the Commission a Form 4 application to conduct casino marketing activity prior to January 1983 was considered to be registered as a field agent and was allowed to solicit players who would receive complimentary services valued at less than $200.

Richard Franz, Deputy Director of the License Division of the Casino Control Commission, testified that letters were sent in October 1982 to enterprises and individuals that might be affected by the proposed amendments to the Casino Control Act which became effective in January 1983 (exhibits P-1a to P-1d). Casino licensees and service industry enterprises were informed that the amendments would eliminate the category of field agent and that activities previously defined as "casino marketing activities" would be classified as "junkets." Anyone engaging in "casino marketing activities" as of the effective date of the proposed amendments would be required to be licensed in accordance with the junket licensure requirements of the proposed amendments. According to Deputy Director Franz, the casino licensees were informed that they would be responsible for insuring that the people with whom they did junket business were properly licensed. A meeting was held with employees of the Tropicana Casino Hotel in October 1982, and license division employees discussed with the Tropicana employees the foregoing changes. The casino licensees were informed that casino marketing activity might be disrupted if individuals performing the functions of a junket representative were not properly licensed.

Deputy Director Franz testified that junket representative license applications began to be filed with the Casino Control Commission after the informational letters were mailed in October 1982. The first temporary junket representative licenses were issued and became effective on January 27, 1983, which was the effective date of the amendments to the Casino Control Act. To implement the changes in the Act, N.J.A.C. 19:49-1.1 et seq. was adopted on an emergency basis on January 11, 1983, and approved by the Governor on January 27, 1983 (exhibit R-2).

Respondent **Walter Shaul**, of Toronto, Canada, has been licensed as a junket representative in the state of Nevada since 1972. In October 1982, respondent Shaul began bringing junket trips to the Tropicana Casino Hotel in Atlantic City, New Jersey, even though he had not filed as a field agent. According to Mr. Shaul, he was given two junket dates by the Tropicana to see if he would work out, and no one from the Tropicana advised him concerning any licensure requirements. Prior to the amendment of section 102 of the Casino Control Act, Mr. Shaul procured patrons for seven trips to the Tropicana, charging a fee of $70 per person (exhibit RS-3).

Mr. Shaul did not initiate an inquiry concerning licensure in New Jersey. In December 1982, he received a telephone call from the marketing department at the Tropicana. He was informed that the licensing statute was going to change and that it would be necessary to complete application papers and return them as soon as possible. Mr. Shaul completed two sets of forms, which were subsequently filed with the Casino Control Commission (exhibits RS-1a and RS-1b). While his application was pending, Mr. Shaul participated in arranging junkets from Toronto, Canada, to the Tropicana, on February 5 and 19, and March 5 and 19, 1983. He procured the customers for these junkets, and he charged them a fee of $70 or $75 per person. It was the candid testimony of Mr. Shaul that he understood in February and March 1983 that he would be required to be licensed, but he was never told that there would be a deadline for accomplishing licensure and he believed that the junkets which he arranged were handled in a proper manner, and in compliance with New Jersey law.

Mr. Shaul was issued temporary junket representative license number 44788-21 in April 1983 (exhibit P-16). He continued to bring two junkets per month to Atlantic City until March 1984. His temporary junket representative license was not renewed by the Casino Control Commission and it expired in April 1984 (exhibit RS-2).

On his Personal History Disclosure forms, Mr. Shaul disclosed his 1978 conviction in Toronto, Canada for permitting gambling at his licensed card club. Mr. Shaul explained that he has applied for a pardon. Letters from customers, friends and professional associates attesting to Mr. Shaul's reputation for good character, honesty and integrity were admitted into evidence as exhibits RS-6a to p.

Richard Ullner of Cincinnati, Ohio, is the sole owner of Midwest Travel Services. He filed as a field agent with the Casino Control Commission early in 1982 and he procured customers for gambling trips to the Tropicana in October, November and December 1982. At some time in December 1982, Mr. Ullner received a telephone call from Elizabeth Yoachum of the Tropicana marketing department. According to Mr. Ullner, he was informed that it was necessary for him to fill out and submit a new application. He could not specifically recall whether he also received a written communication concerning the need to submit a new application. Mr. Ullner's Personal History Disclosure form was filed with the Casino Control Commission on February 4, 1983 (exhibit RU-1). It was his testimony that he had received no communication from

the Casino Control Commission concerning a change in the junket representative licensing statute. Because he had previously filed as a field agent, Mr. Ullner assumed that his field agent status would "roll over" into the junket representative license which he had applied for.

Mr. Ullner procured customers for a junket to the Tropicana on February 21, 1983. Each customer who was charged paid a fee of $100. The witness testified credibly that he believed he was in full compliance with New Jersey licensure regulations at the time of his February 1983 junket trip to the Tropicana.

On March 30, 1983, this respondent was issued temporary junket representative, sole owner/operator junket enterprise license number 44587-21. Although this temporary license did not expire until September 1984, Mr. Ullner brought his last junket trip to Atlantic City in November 1983. Letters from family, friends and professional associates attesting to Mr. Ullner's reputation for good character, honesty and integrity were admitted into evidence as exhibits RU-2a to d.

Beginning in October 1982, respondent Gerald Ades, of Louisville, Kentucky, began organizing junket trips to the Tropicana. At that time, Mr. Ades had not filed with the Casino Control Commission as a field agent. It was his testimony, however, that he asked Elizabeth Yoachum of the Tropicana marketing department if he needed a license and she informed him that he could bring in trips with someone else who was licensed. Thus, Mr. Ades ran his trips with respondent Richard Ullner. Mr. Ades is also licensed to be a junket representative in the state of Nevada.

According to Mr. Ades, he was called by Ms. Yoachum in December 1982 and told that the licensing system was changing and that he would need to file an application for a new license. Ms. Yoachum sent Mr. Ades the application forms, which he then prepared and had filed (exhibit RA-1). Subsequently, Mr. Ades received a letter from Ms. Yoachum which urged him to promptly return the application forms, which he had already done (exhibit RS-5).

Near the end of January 1983, Ms. Yoachum provided Mr. Ades with the date of February 21, 1983, to bring a junket to the Tropicana. Mr. Ades procured one half of the customers for the junket and Mr. Ullner procured the other customers. Each charged his customers a service fee.

On March 16, 1983, respondent Ades was issued a temporary junket representative, sole owner/operator junket enterprise license number 44312-21 (exhibit P-16). From March 1983 until August 1984, Mr. Ades brought a junket to Atlantic City during every month but one. In September 1984, his temporary license expired (exhibit RA-2) and he has not brought any junket trips to Atlantic City since that date. It was the testimony of Mr. Ades that at the time of the February 21, 1983, junket to the Tropicana, he believed that he was in compliance with all New Jersey rules and regulations concerning junkets. In particular, he believed he was in compliance because he had been told by Ms. Yoachum that everything would be all right if he filed the new application. Letters from friends, business and professional associates attesting to the reputation of Mr. Ades for good character, honesty and integrity were admitted into evidence as exhibits RA-3a to f.

Respondent Carl Wilson is a 78-year-old resident of Charlotte, North Carolina. He is a disabled veteran and he became involved in running junkets to supplement his disability income. In 1981, Mr. Wilson filed as a field agent with the Casino Control Commission (exhibits RWIL-1 and RWIL-5). Once a month during 1982, Mr. Wilson brought junket trips to the Tropicana in Atlantic City.

By letter from the Casino Control Commission, dated October 18, 1982 (exhibit RWIL-3), Mr. Wilson was informed that amendments to the Casino Control Act concerning "casino marketing activities" might be proposed in the near future. Mr. Wilson was informed by the letter that enactment of the proposed amendments would require that he file an upgraded application for licensure in order to continue bringing junkets to Atlantic City. According to Mr. Wilson, he never received any notice that the amendments were enacted or had become effective. He acknowledged that he never contacted the Casino Control Commission concering the licensure changes. Mr. Wilson filed his Personal History Disclosure Form 2A with the Casino Control Commission on January 27, 1983 (exhibit RWIL-4).

It was the testimony of Mr. Wilson that he would receive notice from Ms. Yoachum of the Tropicana concerning dates on which he would be permitted to bring junkets. This notice would be received from ten days to three weeks prior to the trip date. Mr. Wilson procured patrons for junket trips to the Tropicana in February and March 1983. He charged these patrons a service fee of up to $100, except for extremely good players or relatives, who would not be required to pay the service fee.

On March 23, 1983, the Casino Control Commission issued to Mr. Wilson temporary junket representative, sole owner/operator junket enterprise license number 44579-21 (exhibit P-16). Mr. Wilson continued to bring junket trips to Atlantic City until his temporary license expired in September 1984 (exhibit RWIL-8). According to Mr. Wilson, he believed that he was in compliance with all rules and regulations when he ran his junket trips to Atlantic City.

Respondent Terry Welborn, of Greensboro, North Carolina, filed with the Casino Control Commission as a field agent in 1982. As a field agent, he brought gambling trips to the Tropicana in Atlantic City once a month during 1982. For these trips, the Tropicana provided a date and a plane and Mr. Welborn procured the players. He would continually monitor the players for amounts wagered and the duration of play.

According to Mr. Welborn, junket arrangements with the Tropicana were always made with Elizabeth Yoachum of the Tropicana Marketing Department. Late in 1982, Ms. Yoachum informed Mr. Welborn by telephone that the Casino Control Act was being amended and that he would need to apply for a sole owner/operator license. Mr. Welborn promply filled out the necessary forms which he received in the mail and returned them to the Casino Control Commission, which received them on February 1, 1983 (exhibit RW-1). Mr. Welborn could not recall receiving any written communication from either the Tropicana or from the Casino Control Commission concerning proposed changes in the licensure requirements for junket activity.

Mr. Welborn continued to bring a junket trip to the Tropicana once a month. In February 1983, Mr. Welborn performed the functions of a junket representative when he brought a gambling trip to the Tropicana. He procured the players and charged each a service fee of $100. On March 30, 1983, the Casino Control Commission issued to Mr. Welborn temporary junket representative license number 44562-21 and temporary junket enterprise license number 1113-70 (exhibits RW-2 and 3). Mr. Welborn continued to run junket trips to the Tropicana until his temporary licenses expired in September 1984 (exhibit RW-4).

Mr. Welborn testified sincerely that when he brought the February 1983 junket trip to the Tropicana he had no feeling whatsoever that he was in violation of licensing regulations. The marketing department of the Tropicana had provided him with the date

for the trip and he was sure that the Tropicana personnel would let him know if he was not in compliance with regulations. Mr. Welborn had no reason to believe that he would have been provided with a date for the trip if he had been in violation of licensing regulations. Mr. Welborn believed that his field agent status would carry him over until he was issued his sole owner/operator license, so he did not inquire on his own if the amendments to the Casino Control Act had become effective.

Mr. Welborn acknowledged that he had been asked by Elizabeth Yoachum to permit respondent Linda Ennis to use his license so that she could bring a junket trip to the Tropicana. According to Mr. Welborn, he asked Ms. Yoachum if the arrangement was legal and she stated that she did not see any problem. The trip subsequently took place, and Mr. Welborn received no money from Ms. Ennis.

At the hearing, Mr. Welborn offered letters from personal and professional associates which attest to his reputation for good character, honesty and integrity. These letters were admitted into evidence as exhibits RW-5a to e.

Michael Fayad, of Aliquippa, Pennsylvania, operates Casino and Sports Travel, and he filed as a field agent with the Casino Control Commission in 1981 (exhibit RF-1). In the fall of 1982, Mr. Fayad was contacted by the Tropicana marketing department and asked if he would be interested in bringing gambling trips to the Tropicana. Thereafter, he arranged junkets from Pittsburgh and Latrobe, Pennsylvania and Youngstown, Ohio, once or twice per month.

In December 1982, Mr. Fayad became aware of proposed changes in the junket licensing requirements. Although he did not recall receiving a letter from the Tropicana concerning the need to file a new license application (see exhibit RS-5), he telephoned the Casino Control Commission staff and was informed that even individuals who had filed as field agents would be required to apply for a junket representative license.

Mr. Fayad filled out an application for a junket representative license and after twice making corrections, it was filed with the Casino Control Commission on March 14, 1983 (exhibit RF-7). While this application was pending, Mr. Fayad continued to bring junket trips to the Tropicana. Although he was not certain of the dates, Mr. Fayad acknowledged that he had performed the functions of a junket representative on the junkets identified in the fourth count of the complaint in this matter. Mr. Fayad

procured the patrons for these junkets and those that were charged paid service fees up to $69 per person. On February 27, March 20 and May 15, 1983, Mr. Fayad served as the junket representative on prearranged junkets to the Tropicana which had originated in Latrobe, Pennsylvania. On February 7, March 21 and 28, April 29 and May 10, 1983, Mr. Fayad was the junket representative on prearranged junkets to the Tropicana which had originated in Pittsburgh, Pennsylvania. On February 28, March 27, April 10 and 19, and May 10, 1983, Mr. Fayad acted as the junket representative on prearranged junkets to the Tropicana which had originated in Youngstown, Ohio (see exhibits P-5a to c, P-6a to e and P-7a to e).

On May 4, 1983, the Casino Control Commission issued to respondent Fayad a temporary junket representative, sole owner/operator junket enterprise license, number 45377-21 (exhibit RF-2). Casino Sports and Travel was issued a temporary junket enterprise license number 1439-70 on February 1, 1984 (exhibit RF-3). Following receipt of his temporary license, Mr. Fayad continued to run junket trips to the Tropicana. His temporary junket representative license expired in May 1984 (exhibit RF-4) and the temporary junket enterprise license for Casino Sports and Travel expired on January 30, 1985. Mr. Fayad organized his last junket trip to Atlantic City in April 1984. It was the testimony of Mr. Fayad that he believed he had been in compliance with the junket licensing requirements when he organized junket trips to Atlantic City between February and May 1983. Since he had been approved as a field agent, he felt there would be no problem operating legally during the transition from field agent status to licensure as a junket representative. According to his testimony, he never knew that it would be a violation to keep bringing junkets to the Tropicana and he was never told that his field agent status would not be effective after any certain date. He acknowledged that he did not inquire concerning the effective date of the junket representative amendments, nor did he inquire as to whether his field agent status would continue to be effective following the change in licensure requirements. He was told that he needed to file a new application in order to comply with the licensing changes and he had done so. Letters from personal, community and professional associates attesting to Mr. Fayad's reputation for good character, honesty and integrity were admitted into evidence as exhibits RF-8a to f.

Respondent **Ellis McMillan** had filed as a field agent with the Casino Control Commission prior to the change in licensure requirements in January 1983. At some time in January 1983, Mr. McMillan spoke with a staff person at the Casino Contro

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Commission and requested an application for a junket representative license. The application was sent to him and he prepared it.

It was the testimony of Mr. McMillan that he sent his prepared Personal History Disclosure Form to Resorts International Hotel Casino, with the understanding that it would be forwarded to the Casino Control Commission. When he subsequently checked with the Commission staff as to the status of his application, he was informed that it had not yet been filed. He then proceeded to pick up the application from the casino and to file it with the Casino Control Commission in September 1983.

On March 7, 1983, Mr. McMillan performed the functions of a junket representative on a prearranged junket trip to the Tropicana from Columbus, Ohio. He procured the customers for this trip and he charged a fee of $50 per person. The trip had been arranged pursuant to a telephone call from the Tropicana which afforded him the opportunity to bring the trip on March 7, 1983 (exhibit P-12a).

Mr. McMillan was issued temporary junket representative, sole owner/operator junket enterprise license number 48834-21 on October 26, 1983. It was the testimony of Mr. McMillan that he believed his status as a field agent was still valid on March 7, 1983. Mr. McMillan's temporary licensure has expired.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), junket representatives shall be licensed in accordance with the qualification requirements for casino employees which are set forth in sections 89 and 90 of the Act. Pursuant to these sections and section 80 of the Act, among the qualifications which such a licensee must establish by clear and convincing evidence is his reputation for good character, honesty and integrity.

N.J.A.C. 19:49-2.1(a) defines junket representative as any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the

participants on, any junket to a licensed casino, regardless of whether or not those activities occurred within the state of New Jersey. Pursuant to N.J.A.C. 19:49-2.1(c)1 and 2, a person acting as a junket representative must be licensed as a junket representative and must be employed by either a licensed casino or a licensed junket enterprise, or must be personally licensed as a sole owner/operator junket enterprise.

The temporary junket representative and junket representative sole owner/operator junket enterprise licenses which were issued to each of the respondents in 1983 have all expired. Between January 27, 1983, and the time of issuance of a temporary license, each respondent engaged in activities meeting the definition of a junket representative, pursuant to N.J.A.C. 19:49-2.1. Based upon the foregoing discussion and undisputed facts, I **CONCLUDE** that the operation of junket activities by each respondent prior to his temporary licensure as a junket representative and junket representative sole owner/operator junket enterprise violated the provisions of N.J.A.C. 19:49-2.1(c)1 and 2.

The operation of junket activities without proper licensure calls into question the good character, honesty and integrity of each respondent. However, each respondent testified credibly concerning his belief, albeit mistaken, that his junket representative activities were being conducted in compliance with the regulations of the Casino Control Commission. While the mistaken belief that the activities were proper does not excuse the violation of the licensing requirements of section 102 of the Act and N.J.A.C. 19:49-2.1 et seq., I **CONCLUDE** that the respondents' conduct does not demonstrate such a lack of good character, honesty and integrity, within the meaning of sections 89b(2), 90b and 102b of the Act, as to require judgment that the respondents are unqualified for licensure, pursuant to section 129 of the Act.

Sections 129 and 130 of the Casino Control Act authorize the imposition of sanctions for violations of the provisions of the Casino Control Act or regulations promulgated thereunder. The respondents created a potential risk to the public and to the integrity of gaming operations by the conduct of junket representative activities while they were not in compliance with licensure requirements. However, the conduct occurred without the knowledge that it was in contravention of the provisions of the Casino Control Act and regulations promulgated thereunder. In addition, each respondent applied for and was issued temporary licensure which permitted the junket activities to continue. Following the expiration of their temporary licenses, the respondents have been unable to perform junket activities for the licensed casinos in Atlantic City. Considering the

foregoing factors, I **CONCLUDE** that the appropriate sanction for the violative conduct of each respondent is the issuance of a letter of reprimand which shall be made a permanent part of each respondent's file, pursuant to sections 129(8) and 130 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that a letter of reprimand shall be issued and made a permanent part of the file of respondents Michael Fayad, Walter Shaul, Ellis McMillan, Carl Wilson, Gerald Ades, Richard Ullner and Terry Welborn.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 12, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

August 14, 1985
DATE

Mary Ann Borczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

August 19, 1985
DATE

Ronald L. Parker R.S.
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1a to c	Letters, dated October 18, 1982, concerning possible amendments to the Casino Control Act
P-1d	List of junket representative applicants with attached letter
P-2a	Junket report
P-2b	Sworn interview of Gerald Ades and others, dated December 27, 1983
P-3a and b	Junket reports
P-3c	Sworn interviews of Betty Jarrett and Carl Allegood, dated July 1, 1983
P-3d	Sworn interview of Carl Allegood, dated December 11, 1983
P-3e	Sworn interview of Carl Allegood, dated March 1, 1983
P-4a to d	Junket reports
P-4e	Sworn interviews of Chester Glass, Terry Welborn and Linda Ennis, dated December 19, 1983
P-5a to c	Junket reports
P-6a to e	Junket reports
P-7a to e	Junket reports
P-7f	Sworn interview of Michael Fayad, dated November 18, 1983
P-8a and b	Junket reports
P-9a to e	Junket reports
P-10	Junket report
P-11a to d	Junket reports
P-12a	Junket report
P-12b	Sworn interview of Ellis McMillan, dated December 20, 1983
P-13a to d	Junket reports
P-13e	November 14, 1983
P-14a and b	Junket reports
P-14c	Sworn interview of Carl Wilson, dated December 20, 1983

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P-15	Sworn interviews of Elizabeth Yoachum and Harold Klarich, dated July 22, 1983
P-16	Junket representative information memo, dated June 6, 1985

FOR THE RESPONDENTS:

R-1	Not in evidence (interim procedures)
R-2	Emergency rules, 15 N.J.R. 257
RA-1	Personal History Disclosure Form for Gerald Ades
RA-2	License Expiration Notice, dated September 12, 1984
RA-3a to f	Character letters
RF-1	Notice to Michael Fayad, dated September 28, 1981
RF-2	License letter, dated May 4, 1983
RF-3	License letter, dated February 10, 1984
RF-4	Expiration Notice, dated May 2, 1984
RF-5	Not in evidence
RF-6	Expiration Notice, dated January 31, 1985
RF-7	Personal History Disclosure Form of Michael Fayad
RF-8a to f	Character letters
RS-1a and b	Personal History Disclosure Forms of Walter Shaul
RS-2	Expiration letter, dated April 11, 1984
RS-3	List of junket dates prior to license approval, dated November 17, 1983
RS-4	Not in evidence
RS-5	Notice from the Tropicana Casino Hotel, dated January 19, 1983
RS-6a to p	Character letters
RU-1	Personal History Disclsoure Form of Richard Ullner
RU-2a to d	Character letters
RW-1	Personal History Disclosure Form of Terry Welborn
RW-2	License letter, dated March 30, 1983

RW-3	License letter, dated March 31, 1983
RW-4	Expiration Notice, dated September 28, 1984
RW-5a to e	Character letters
RWIL-1	Personal History Disclosure Form of Carl Wilson
RWIL-2	Business Entity Disclosure Form
RWIL-3	Amendment Notice, dated October 18, 1982
RWIL-4	Personal History Disclosure Form of Carl Wilson
RWIL-5	Amendment Notice, dated September 28, 1981
RWIL-6	License letter, dated March 23, 1983
RWIL-7	License letter, dated March 21, 1984
RWIL-8	Expiration Notice, dated September 28, 1984

WITNESSES

FOR THE PETITIONER:

Donald E. Hamer

Richard Franz

Gerald Rogers

FOR THE RESPONDENTS:

Ellis McMillan

Walter Shaul

Richard Ullner

Gerald Ades

Carl Wilson

Terry Welborn

Michael Fayad

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-79
OAL DOCKET NO. CCC 1839-85
LICENSE/REGISTRATION NO. 20045-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	:	
V.	:	FINAL ORDER
CLAUDE P. BAUCUM, JR., Respondent.	:	

This hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of October 23, and October 30, 1985,

IT IS on this 11th day of December, 1985, ORDERED that the initial decision in this matter is modified as follows:

(1) Although the respondent's casino license expired effective December 31, 1984, the Commission's Employee License Bureau as a matter of practice allows a 60-day grace period within which an individual may file an application for renewal without penalty, and therefore the respondent held a valid casino license at the time the Division of Gaming Enforcement filed its original complaint in this matter on February 28, 1985;

(2) The respondent's offense of stealing a $5 token from a "toke box" at the Atlantis Hotel and Casino in the course of his

employment contrary to N.J.S.A. 2C:20-3 is an offense which renders his licensure and registration inimical to the policy of the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4); and

(3) In light of all the circumstances and pursuant to N.J.S.A. 5:12-91(e), it is consistent with public policy and in the interest of justice to waive the respondent's disqualification and permit him to retain his casino hotel employee registration.

IT IS FURTHER ORDERED that the casino employee license of Claude P. Baucum, Jr. is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Claude P. Baucum, Jr.'s disqualification is waived pursuant to N.J.S.A. 5:12-91(e), permitting him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Claude P. Baucum, Jr. is prohibited from reapplying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Claude P. Baucum, Jr., the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1839-85

AGENCY DKT. NO. 85-79

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,

v.

CLAUDE P. BAUCUM, JR.,
Respondent.

William Mountford, Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey, attorney) for petitioner

Wayne Partenheimer, Esq., for respondent

Record Closed: August 9, 1985 Decided: September 9, 1985

BEFORE **EDGAR R. HOLMES,** ALJ:

On February 28, 1985, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking to revoke respondent's casino employee registration #20045-40 and casino employee licenses 23651-22 and 23651-21 because he was charged with the disorderly persons offense of theft from the Atlantis Casino/Hotel. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried at the Office of Administrative Law by telephone conference on May 24, 1985. At the pretrial conference the Division of Gaming Enforcement advised that the complaint had been amended. The amended complaint was filed with the Casino

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Control Commission on June 25, 1985. The matter was scheduled to be heard on July 22, 1985 and was continued because of discovery problems until August 9, 1985 at which time there was a plenary hearing in the Somers Point Municipal Court in Atlantic County.

At the hearing it appeared that the respondent had allowed his licenses to lapse pending the outcome of the hearing. The parties conferred, both on and off the record, and it was agreed, in the interest of economy, that the licensing aspect should not be withdrawn, but should be submitted for determination at the hearing along with the registration issue since the same facts would be presented. This is an application of the entire controversy doctrine enunciated in R 4:27 and the Uniform Administrative Procedure Rules of Practice 1:1-14.1(a).

The issues were accordingly framed as follows:

A. If the respondent was convicted of the disorderly persons offense of theft, would licensure or his continued registration be inimical to the Casino Control Act?

B. Does the applicant possess the good character, honesty and integrity for licensure?

Prior to the taking of the testimony the respondent withdrew his application for dismissal of the complaint for failure to answer interrogatories because the answers to interrogatories were served upon him prior to the hearing. That motion was granted.

The parties jointly submitted the following exhibits marked into evidence.

J-1 Summons SI53993 charging the respondent with theft of a $5 token from the Atlantis Casino/Hotel on October 31, 1984 and the disposition of that complaint by a plea of guilty resulting in a $100 fine and $25 costs.

J-2 Detective Pfrommer's two page investigation report of the incident.

J-3 Arrest report of Respondent on October 31, 1984 for the incident.

J-4 Respondent's rap sheet showing a 1972 conviction for public nuisance, a 1972 arrest for careless driving, bald tires, and no mufflers with no disposition, and a conviction in 1974 for distribution of marijuana resulting in a sentence of 364 days in the Burlington County Jail and a $500 fine.

J-5 The Division of Gaming Enforcement's letter of November 30, 1981 recommending respondent for registration and licensure on the basis that he was rehabilitated from his 1974 conviction for drug distribution.

The Division of Gaming Enforcement called two witnesses, Carol Sink, a security officer, and Robert Caulfield, a surveilance officer. Based upon their testimony, the joint exhibits and the subsequent testimony of the respondent who substantially admitted taking the token and pleading guilty in the Municipal Court to the offense, I **FIND** the following facts:

1. Casino dealers pool their tips which are placed in a box called a "toke box" and collected and then distributed by a committee of dealers called a "toke committee."

2. At approximately 8:15 or 8:20 a.m. on the morning of October 31, 1984 while the Atlantis Casino was closed to the public, Carol Sink observed a $5 token in a toke box in pit D by the black jack table and she reported her observation to Lt. Collins, her supervisor.

3. Robert Caulfield was told to place the token under camera surveillance. He first observed the token but when he attempted to focus his camera on the token, he observed that it was gone.

4. Robert Caulfied observed respondent in the area cleaning the casino. Caulfied and Lt. Collins approached respondent and questioned him. Respondent was asked to empty his pockets and he had a $5 token. He later admitted taking the token from the toke box.

5. On November 21, 1984, respondent pled guilty to theft of the token, a disorderly persons violation of N.J.S.A. 2C:20-3, and was fined $100 and $25 costs imposed.

Respondent testified in his own behalf and admitted that he took the token. By way of explanation he asserted that although there was a policy at the Atlantis Casino that all found money and tokens were to be turned in, that policy was not enforced. He acknowledged that he averaged about 2 or 3 dollars a day in found money and that it was not unusual for employees to find $15 or more on the floors and in the trays on any given day. He has never been disciplined for keeping found money and on one occasion was permitted by security officers to keep a token that was wedged in a toke box that the security officers were unable to extricate. He admitted that there was a difference between money or tokens found on the floor and money or tokens found in a toke box. The former were lost; the latter belonged to the toke committee.

The Division of Gaming Enforcement asserts that theft from an employer casino, no matter how small the amount, is equivalent to "inimicality." I have reached the same conclusion in other cases; for example: Division of Gaming Enforcement v. Merle Levitt, OAL DKT. NO. CCC 1712-85 decided July 2, 1985, (final decision pending before the Casino Control Commission). That case can be distinguished from the instant case on the grounds that Levitt's thefts were ongoing and the result of a plan. This was but the act of a moment. What is particularly pernicious here however, is the "finders - keepers" mentality displayed by respondent.

LEGAL DISCUSSION

The Casino Control Act contains separate provisions for licensure and registration. The licensure provision is N.J.S.A. 5:12-90. The registration provision is N.J.S.A. 5:12-91. Both refer to N.J.S.A. 5:12-86. Section 90(e) reads as follows:

> The Commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in Section 86 of this act.

Section 91(b) reads as follows:

> Subsequent to the registration of a casino hotel employee the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86. . . .

Section 86 enumerates certain crimes for the conviction of which an applicant is automatically disqualified. Disorderly persons theft is not among them. Therefore, in order to disqualify the respondent, the Division must show by a preponderance of the evidence that the offense of disorderly persons theft falls within the purview of 86(c) (4) the so called "inimicality" section of the statute.

Inimicality is discussed at page 15 of In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission Opinion (February 1979):

> Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in the light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations."

Inimicality issues have also been equated with rehabilitation issues, Div. of Gaming Enforcement v. Brian K. Worthey, OAL DKT. NO. CCC 7866-84 (March 19, 1985), adopted, Casino Control Commission (May 1, 1985).

The rehabilitation criteria for both licensing and registration are identical (90h(1) through (8) and 91 d (1) through (8)). For registration however, "The Commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of (the) act and upon a finding that the interests of justice so require." (91 e.) No such waiver provision exists for licensure.

Another important difference between licensure and registration is that for licensure an applicant must ". . . establish by clear and convincing evidence (his) reputation for good character, honesty, and integrity" [89 b (2)] incorporated by reference in (90 b.). No such requirement exists for registration.

A much higher standard therefore exists for licensure than for registration, despite the identity of rehabilitation criteria.

1. The first rehabilitation factor enumerated in the statute is "the nature and duties of the position." A licensed employee has access to the casino floor, a registrant does not. A casino patron expects and deserves a safe environment in which to gamble. At the very least she should have no fear that an employee will appropriate an unattended chip. Hotel guests, while deserving the same environment, have no such expectation.

2. The second factor is the "nature and seriousness of the offense." The offense is theft. It was charged as a theft from the Atlantis Casino. It was more probably a theft from fellow employees, a no less serious offense and one which cannot be countenanced in any case.

3. The third factor is "the circumstances under which the offense occurred." The respondent was on the casino floor at the time of the incident in the course of his licensed employment. He was cleaning the casino. Apparently he was looking for three things: dirt, lost chips, and money. He half believed he could keep lost chips or money, at least that was what he perceived to be the actual practice of the casino, if not the policy.

4. The fourth factor is the date of the offense. This occurred on October 31, 1984 and must be characterized as recent.

5. The fifth factor is the age of the applicant. The respondent was 31 years old when the incident occurred; old enough to know better.

6. The sixth factor is whether the offense was isolated or ongoing. This offense was isolated in the sense that on this occasion the

respondent knew the owner of the token. Presumably, on other occasions when the respondent found money or chips, he did not know the rightful owner.

7. The seventh factor is whether or not there was any contributing social factor. If it is the case that the casino policy on found chips and money is more honored in the breach, as the respondent alleges, then this policy is a contributing social factor to his "finders keepers" mentality. His testimony on this issue was unrebutted. However, the actual policy of the casino is more stringent than respondent alleges because it appears that he took the token while the surveillance crew was in the act of setting up a controlled situation.

8. The final rehabilitation factor is all inclusive. The only one to which respondent addressed himself and which was relevant to his situation, was good conduct in the community. On that issue respondent presented three witnesses who were friends of his father.

   a) Mr. James Lucas, a retired master sergeant, who is presently employed as a corrections officer, testified to respondents reputation for good character in the community. He also knows respondent personally, works on automobiles with him and fishes with him. He personally likes and approves of respondent.

   b) Mr. James Faulkes, a self-employed electrician, has known respondent for many years. He testified to respondent's good reputation and he personally likes and approves of respondent.

   c) Mr. Herbert Dorsey, a retired master sergeant and now an employee of McGuire Air Force Base, served at posts around the world with respondent's father and has known respondent since infancy. He was the only character witness who was aware of respondent's police record but nevertheless likes and approves of respondent personally. He also testified that respondent enjoyed a good reputation in the community.

All of the character witnesses presented themselves favorably and appear to be substantial members of the community.

Nevertheless, based upon the foregoing I **CONCLUDE** that the respondent's licensure and continued registration would be inimical to casino operations and to the act.

Theft of any sort cannot be tolerated in a casino or in a casino hotel. I arrive at this conclusion despite the respondent's reputation in his community for good character, honesty and integrity. I am aware that respondent is capable of rehabilitation. He is apparently rehabilitated from his drug conviction of 1974. The Division of Gaming Enforcement and the Commission concluded that he was. His character witnesses were of such character themselves that they would not have come forward on his behalf if they suspected his involvement in drugs.

However, since the requirements for registration are less onerous than for licensure, the five-year disqualification period which follows from revocation is too long a period to impose upon a person who is amenable to rehabilitation for the purposes of registration but not for the purposes of licensure.

I **CONCLUDE** that respondent has not demonstrated his good character, honesty and integrity by clear and convincing evidence.

I **ORDER** that respondent's casino employee licenses application be **DENIED.** I further **ORDER** that respondent's casino hotel registration be suspended for a period of one year beginning October 31, 1984.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

58

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9/9/85
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/12/85
DATE

Jeanette T. Friel
CASINO CONTROL COMMISSION

Mailed to Parties:

September 13, 1985
DATE

Ronald D. Fauntleroy, Jr.
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 83-281; 83-297
OAL DOCKET NOS. CCC 9931-83; CCC 9692-83
REGISTRATION NOS. 27767-40; 35154-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
CONRADO BERRIO,	:	
Respondent.	:	
AND	:	ORDER OF REMAND
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
CARLOS BERRIO,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law (OAL); and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of May 1, 1985,

IT IS on this 8/1st day of October 1985, ORDERED that the matter be remanded to the OAL for further proceedings. Without limiting the scope of the hearing, the Commission desires additional evidence concerning the following:

1. Whether either respondent willfully or in conscious disregard for the regulatory process, provided a fraudulent social security number to the Division of Gaming Enforcement (DGE) contrary to N.J.S.A. 5:12-86(b).

2. Whether either respondent committed false swearing in violation of N.J.S.A. 2C:28-1 or perjury in violation of N.J.S.A. 2C:28-2 in the course of their testimony at the hearing in this matter conducted on July 31, 1984, and, if so, whether either respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g).

A remand is required to permit the Commission to determine whether the respondents are qualified to hold casino hotel employee registrations pursuant to N.J.S.A. 5:12-91. The ALJ rejected on procedural grounds the DGE's attempts to inject these issues into the cases. While the Commission intends no criticism of the ALJ's rulings on such procedural matters, the considerations underlying the entire controversy doctrine impel further proceedings. In re Kallan 92 N.J. 4, 28 (1983).

The issue of respondent Carlos Berrio's alleged provision of a fraudulent social security number was raised at the hearing and addressed in the initial decision. However, the ALJ interpreted the Commission's decision in State v. Orlando Ospina-Lopez, Docket No. 84-51 (Commission order January 1, 1985), to require dismissal of the complaints against the respondents on the issues relating to their illegal alien status and their provision of fraudulent social security numbers. To the extent that the allegations in the complaints are limited to the respondents' mere status

as illegal aliens, the ALJ is correct. However, contrary to the ALJ's interpretation, the Ospina-Lopez decision is not dispositive of the issue of whether a social security number is a "material fact pertaining to licensure" as that phrase is used in section 86(b) of the Casino Control Act. As to that issue, the Commission concluded in Ospina-Lopez that the ALJ did not find, nor did the Commission perceive, "any evidence in the record... to establish that the false information supplied by the respondent is 'untrue or misleading as to a material fact pertaining to the qualification criteria.'" The failure to adduce evidence on the point in the Ospina-Lopez case does not establish the proposition that a social security number is not a material fact in any subsequent case. Based upon the record in this case, including the representations of counsel at the Commission's meeting of May 1, 1985, the Commission has determined that a social security number is a material fact pertaining to qualification criteria within the meaning of N.J.S.A. 5:12-86(b). To the extent that the Ospina-Lopez decision indicates otherwise, it is hereby disapproved.

IT IS FURTHER ORDERED that the Division of Gaming Enforcement file an amended complaint against both respondents setting forth facts relevant to the above issues; and

IT IS FURTHER ORDERED that copies of this order of remand be served upon Conrado Berrio, Carlos Berrio, the DGE and the OAL within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 9692-83
and CCC 9931-83
AGENCY DKT. NOS. 83-297
and 83-281

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
CARLOS BERRIO,
Respondent.
and
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
CONRADO BERRIO,
Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Nitza I. Blasini, Esq., **Jack Ransome,** Esq., and **Lorraine Gormley,** Esq., for respondents (Cape-Atlantic Legal Services, attorneys)

Record Closed: January 7, 1985 for CCC 9931-83 Decided: February 5, 1985

Record Closed: January 21, 1985 for CCC 9692-83 Decided: February 5, 1985

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BEFORE **JEFF S. MASIN**, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission, on August 25, 1983, requesting that the Commission revoke Mr. Carlos Berrio's casino hotel employee registration. Mr. Berrio requested a hearing, and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The Division also filed a complaint on the same date against Mr. Berrio's brother, Conrado. Conrado also requested a hearing, and the matter was also transferred to the OAL.

In its complaint against Carlos, the Division charged that Mr. Berrio had entered the United States illegally, in violation of Section 241(a)(2) of the Immigration and Nationality Act. The Division contended that Carlos was barred from employment in the United States because of his illegal status, and that therefore his registration had to be revoked. The Division relied upon Section 86(c) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., arguing that continued registration of Carlos would be inimical to the policies of the Act, and to casino operations. In addition, the Division relied upon Section 86(d), which requires denial of a casino license (or registration) to one who is the subject of "current prosecution or pending charges" for any offense included in Section 86(c), and also upon Section 86(g), which permits denial of a casino license (here registration) to an applicant based on "the commission . . . of any act . . . which would constitute any offense under Section (c) of Section 86, even if such conduct has not or may not be prosecuted under the criminal law of this State . . ."

In its complaint against Conrado, the Division also contended that he had entered the country illegally, could not be a registrant because of his illegal status, and that continued registration would be inimical. The same allegations with respect to Sections 86(c) and (d) and (g) were also contained in the complaint. In addition, the Division contended that in connection with his Personal History Disclosure Form No. 4, Conrado had supplied a fraudulent social security number.[1]

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[1] Both men are currently in the United States while their deportation is stayed pending final determination by the U.S. Immigration and Naturalization Service.

Following transmittal of the two cases to the OAL prehearing conferences were held, and it was determined that the matters would be tried together in view of the similar nature of the charges and evidence. No formal order of consolidation was entered.

A hearing was held as to the charges against both gentlemen on July 31, 1984, in Pleasantville Municipal Court. At that hearing, the Division advised that it had learned that Carlos had also provided a false security number in his Personal History Disclosure Form, and that it wished to amend its complaint to bring that charge against Carlos as well. It was agreed that the Division could file a further complaint with the Commission since, due to language and discovery problems, it would not have been appropriate to try the new allegation against Carlos on July 31. The Division subsequently moved to reopen the hearing (prior to the issuance of any initial decision), and the matter was again heard, after considerable delay caused by changes in the staffing of the respondents' attorney's office, as well as discovery problems, on January 7, 1985. At that time, the case against Carlos was concluded, with the presentation of some further testimony concerning evidence which the Division felt might show that Carlos had lied under oath at the July 31 hearing, concerning his contacts with his former wife and child.[2] The case against Conrado was completed on January 21, 1985.

On January 21, counsel for the respondents presented the court with a copy of the final order of the Casino Control Commission in the matter of State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Orlando Ospina-Lopez, CCC 3131-84, Initial Decision dated September 17, 1984, Final Decision dated January 14, 1985. On the basis of that decision, respondents argue that their cases must be dismissed. After reviewing the facts of these cases and the facts of the Ospina-Lopez case, the court is in agreement with the respondents, and shall order the dismissal of both complaints.

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[2] The Division announced at the January 7 hearing that it would not pursue the issue of the alleged false social security number against Carlos.

DISCUSSION

In the Ospino-Lopez case, the Commission reviewed a matter in which Mr. Lopez had been charged with being an illegal alien, as well as having provided a false social security number, in connection with his PHDF-4 application. The administrative law judge had found as a fact that Lopez knew that the social security card, which he had purchased on a street in Paterson, New Jersey, was not a legitimate one, and had concluded that Lopez had been untruthful when he testified that he thought the number was "good." In addition, the administrative law judge further found that registration of Mr. Lopez would be improper because he had provided false information to the Commission, in connection with his application. In addition, the A.L.J. concluded that the registration of someone providing false information to the Commission would be inimical to the policies of the Casino Control Act, requiring revocation pursuant to Section 86(c). Finally, the A.L.J. concluded that the respondent's status as an illegal alien constituted an inimical offense.

In its final decision, the Casino Control Commission rejected the initial decision, and concluded that the provision of a fraudulent social security number was not the provision of information which was required to be provided by applicants, in connection with a PHDF-4 application, and that it was not information of a material nature, and thus Mr. Lopez had not violated Section 86(b), which speaks of the provision of "untrue and misleading as to a material fact pertaining to the qualification criteria." In addition, the Commission concluded that since providing false information to the Commission was neither a criminal nor disorderly persons offense, it did not constitute a basis for a finding of inimicality, under the "inimical clause" of Section 86(c)(4). Finally, the Division found "no grounds to conclude that (the status of being an illegal alien) constitutes a criminal or disorderly persons offense which is necessary for disqualification under Section 86(c)(4). The charges against Mr. Lopez were dismissed.

In this matter, the sole charge against Mr. Conrado Berrio is his status as an illegal alien. No other charges have been pursued by the Division. Therefore, in view of the Commission's position with respect to Mr. Lopez, there appears to be no alternative but to dismiss the charge against Conrado Berrio. Since he is in the same position as Lopez, and there are no factual or legal differences in their status, the Commission's decision in Lopez, is dispositive. Therefore, I **ORDER** that the case against Conrado Berrio be **DISMISSED.**

With respect to Carlos, again the Lopez decision is dispositive. The Commission has concluded that despite the fact that one provides patently false information to the Commission, if it is information not of a material nature, at least with respect to registrants, such action does not constitute a ground for revocation. Since the only charges against Conrado are the false social security number and the illegal status, his case also must be dismissed.

With respect to the information presented in evidence concerning the possibility that false information was provided in testimony at the initial hearing with respect to the status of either man's family situation, the Division can assess whether it believes that the testimony in evidence might support some further action against either man seeking revocation or other sanctions either of a civil or criminal nature because of possible perjury. Those matters are not before this agency in the context of this contested case.

For the reasons expressed, it is **ORDERED** that the complaints against Conrado and Carlos Berrio be **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 5, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

February 6 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

February 8, 1985
DATE

Ronald J. Parker /KS
OFFICE OF ADMINISTRATIVE LAW

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EXHIBIT LIST

On behalf of petitioner:

P-1 Two-page extract from Conrado Berrio's Personal History Disclosure Form

P-1b Rental application for 115 South Sovereign Avenue, Atlantic City, Apartment 2

P-2 Lease between Conrado Berrio and Thompson Realty Company for 115 South Sovereign Avenue, Apartment 2, Atlantic City, New Jersey

P-3 Occupancy permit

On behalf of Conrado Berrio:

R-1 Divorce decree, in the matter of Conrado Berrio against Amanda Berrio, entered in the Supreme Court, State of New York, New York County, January 7, 1982

R-2 Letter of December 10, 1984, from Heiko Bendixen, Executive Chef, Bally's Park Place Casino Hotel

R-3 Certificate of marriage between Conrado Echeveri Berrio and Carol Lynn Jerousek

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-262
OAL DOCKET NO. CCC 8823-84
REGISTRATION NO. 49195-40

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

DANIEL M. BERTOLINO,

Respondent.

FINAL

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 26, 1985;

IT IS on this 12th day of July 1985, ORDERED that the initial decision is modified as follows:

(1) At p. 5 the Administrative Law Judge (ALJ) concluded that the respondent's conviction for possession of over 25 grams of marijuana, contrary to N.J.S.A. 24:21-20a(4), is a disqualifying offense under N.J.S.A. 5:12-86(c)(3). This is inaccurate. N.J.S.A. 5:12-86(c)(3) establishes as disqualifying offenses only high misdemeanors under N.J.S.A. 24:21-19. No simple possession of CDS offense, as distinguished from possession with intent to manufacture, distribute, or dispense, is a statutory disqualifier under the Casino Control Act, N.J.S.A. 5:12-1 et seq.

(2) At p. 5 the ALJ referred to the respondent's admission that he was in possession of marijuana with intent to distribute and indicated that such an offense was in violation of "N.J.S.A. 24:21-20a(4)." The citation is corrected to read "N.J.S.A. 24:21-19a(1)."

(3) The Commission finds that the respondent's admission of a violation of N.J.S.A. 24:21-19a(1) warrants his disqualification pursuant to N.J.S.A. 5:12-86(c)(3) and (g).

IT IS FURTHER ORDERED that the casino hotel employee registration of Daniel M. Bertolino is revoked based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Daniel M. Bertolino is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.S.A. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Daniel M. Bertolino, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8823-84
AGENCY DKT. NO. 84-262

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW AND
PUBLIC SAFETY,
Petitioner,

v.

DANIEL M. BERTOLINO,
Respondent.

Paul A. Vagianos, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Daniel M. Bertolino, respondent pro se

Record Closed: March 29, 1985 Decided: May 13, 1985

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Daniel M. Bertolino, respondent. The Division alleged that Mr. Bertolino had committed a criminal offense, which constituted a violation of section 86c(3) of the Casino Control Act (Act), for which the Division seeks revocation of the respondent's casino hotel employee registration, pursuant to section 129. The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on August 21, 1984. By letter dated August 21, 1984, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed with the Commission on Sepember 11, 1984, the respondent requested a hearing. The Commission suspended the respondent's registration pending the outcome of this matter. On December 7, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 5, 1985. The matter was heard on March 29, 1985, at which time the record closed.

FINDINGS OF FACT

Mr. Bertolino is 26 years of age. He is a 1976 graduate of Highland Regional High School, Blackwood, New Jersey.

On August 19, 1976, the respondent was arrested in Gloucester Township and was charged with possession of a controlled dangerous substance, marijuana. The respondent received a conditional discharge.

Following his graduation from high school until mid-1983, the respondent worked at a variety of jobs.

During mid-1983 the respondent was issued a casino hotel employee, registration, number 49195-40. Also, for the one-year preceding June 1984 the respondent was employed by Boardwalk Regency Corporation (BRC), Housekeeping Department, as a porter. This was his first steady employment. His performance was excellent.

The respondent was involved in an incident on June 5, 1984, which led to his arrest by the Winslow Township Police Department (P-2). As a result of a search following a motor vehicle stop, the applicant was charged with violations of N.J.S.A.

2C:39-5d, unlawful possession of a weapon, a knife; N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance over 25 grams, marijuana; and N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance with intent to distribute (P-2). As a result of the search, the police confiscated a knife and 12 bags, of two different sizes, which were later determined to contain marijuana (P-3 and P-4). The respondent was released on $2,000 bail.

On July 18, 1984, the respondent was indicted by a Camden County Grand Jury for purported violations of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana; N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to disbribute; and N.J.S.A. 2C:39-5D, unlawful possession of a weapon, a knife (P-1). On August 2, 1984, the respondent pled not guilty (P-5). On October 15, 1984, and with the aid of a public defender, the respondent retracted his plea of not guilty and pled guilty to counts one and three, i.e., N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, and N.J.S.A. 2C:39-5d, unlawful possession of a weapon. The second count was dismissed. On December 7, 1984, the respondent was sentenced on each count to a two-year probationary period, urinalysis monitoring, 50 hours of community service and a total of $50 to the Violent Crimes Victims Fund, the sentences to run concurrent each with the other.

To date the respondent has paid the fine to the Violent Crimes Victims Fund and has performed the 50 hours of community service, which consisted of washing trucks for the Voorhees Township Road Department. In addition, the respondent has passed the single urinalysis test to which he was requested to submit.

The respondent described the circumstances underlying the incident. More specifically, he conceded that he possessed the marijuana with intent to distribute. He intended to distribute the marijuana to his co-employees, although not during work hours. This was the first occasion when he intended to distribute drugs.

As a result of the Division's complaint herein, the Commission suspended the respondent's registration pending the outcome of these proceedings. Accordingly, the respondent is not employed currently by any licensed casino.

The respondent occasionally works as a carpenter or general laborer for his cousin, who is a manager of an apartment complex.

The respondent has not used any drugs since his arrest.

The respondent resides with his mother, whom he helps support. In his spare time, the respondent remains at home and reads.

Although the Division did not offer any rebuttal to the respondent's testimony, it is essential to assess the respondent's credibility. Initially, Mr. Bertolino's position in this matter must be recognized. He is the holder of a casino hotel employee registration and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from my observations of the respondent's demeanor, the plausibility of his testimony, and the fact that his testimony was consistent with the documentary evidence, I am persuaded to believe that the respondent testified truthfully.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that Mr. Bertolino's conduct constitutes two violations of section 86c(3) of the Act, by reason of the conviction and by means of section 86g, and, accordingly, establishes that his registration should be revoked. The respondent disputed this contention.

(A) N.J.S.A. 5:12-86c(3) and N.J.S.A. 5:12-86g

Section 86g of the Act provides for disqualification from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19 be disqualified from licensure.

The respondent's conviction of a violation of N.J.S.A. 24:21-20a(4), possession of over 25 grams of marijuana, is a disqualifying offense under section 86c(3). Further, the respondent's admission that he was in possession of the marijuana with intent to distribute constitutes another violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance with intent to distribute, which is also a disqualifying offense, pursuant to section 86c(3).

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent had committed two violations of section 86c(3), which disqualify him from continuing as a registrant.

(B) N.J.S.A. 5:12-91d

An applicant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Mr. Bertolino held a casino hotel employee registration and, although currently not employed by a casino, was employed as a porter. As such, he had no responsibilities for actual gaming activities and had some limited contact with patrons of the casino. Nevertheless, a registrant can work in areas where there is substantial contact with patrons of the casino.

Second, the respondent was convicted of a violation of N.J.S.A. 24:21-20a(4), possession of over 25 grams of marijuana, and he committed the offense of possession with intent to distribute. Under section 86c(3), these are statutory disqualifiers. Given the drug-related nature of these offenses, they are extremely serious.

Third, the respondent knew that his conduct was criminal. In addition, the respondent intended to distribute the marijuana to co-employees, i.e., registrants or license holders. Clearly such conduct renders the misconduct more egregious.

Fourth, the respondent committed his criminal acts on June 5, 1984, less than one year ago.

Fifth, at the time of the offense, the respondent was 25 years of age. There was no indication that his misconduct was due to immaturity.

Sixth, the respondent's criminal misconduct was isolated in nature. Although his misconduct in 1976 was marijuana-related, the substantial separation in time between the offenses precludes any consideration thereof.

Seventh, there were no social conditions which contributed to the offense.

Eighth, it is evident that the respondent has made some rehabilitative efforts. He pled guilty in accordance with the plea bargain agreement and has accepted full responsibility for his misconduct. Also, in this hearing he admitted the full nature of his

misconduct. Further, although the respondent's probationary period will continue for an additional one and one-half years he has completed successfully to date the terms of his sentence. There is every expectation that the respondent will complete his sentence without difficulty. Although the respondent had a positive employment record in the casino industry, it was brief, and he has not established a positive employment record subsequent to the incident. Last, given the circumstances under which the respondent committed his misconduct, insufficient time has passed since the incident for the respondent to establish his rehabilitation.

I **CONCLUDE** that the respondent has failed to establish, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(C) PENALTY

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activites;

e. To prevent future misconduct of a like nature from recurring.

The Division sought revocation of the respondent's casino employee license.

The respondent's conduct constituted a clear violation of the Act and the regulations thereunder as well as a violation of the criminal laws. This offense, as does any violation of the regulatory scheme, constitutes a potential threat to the integrity of licensed gaming and cannot be permitted to pass unchecked. Further, the offense was serious in nature.

Although the respondent could not establish his rehabilitation, there is some reason to believe that he will not repeat his misconduct. Nevertheless, it must be noted that his misconduct was extremely serious in nature as it involved the sale of drugs to other persons, including registrants and licensees under the Act. Further, this misconduct occurred during a time when the respondent held a registration and was employed in the gaming industry in New Jersey. This conduct reflects a serious disregard and a lack of appreciation of his attendant responsibilities. The period in which he has been free of misconduct is not sufficient to establish an absence of any risk to the public and to the integrity of gaming operations. Therefore, his registration must be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration held by Daniel M. Bertolino, number 49195-40, be **GRANTED** and that the registration be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 8823-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5-13-85
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

May 14, 1985
DATE

Bernadette J. Friggin
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 16 1985
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 State of New Jersey v. Daniel Bertolino, Superior Court of New Jersey, Camden County, Law Division - Criminal, Number I-1810-07-84, Indictment, filed July 18, 1984 (6 pages)

P-2 Winslow Township Police Department Investigation Report, Daniel Bertolino, June 5, 1984 (2 pages)

P-3 Winslow Township Police Department - Supplementary Investigation Report, prepared by Detective N. Cuomo, June 5, 1984

P-4 Winslow Township Police Department - Property Report, June 5, 1984

P-5 The State of New Jersey v. Daniel Bertolino, Superior Court of New Jersey, Camden County, Law Division - Criminal, Number I-1810-07-84, Judgment of Conviction, December 7, 1984 (3 pages)

P-6 Federal Bureau of Investigation - Rap Sheet, Daniel M. Bertolino

WITNESS LIST

FOR THE DIVISION:

None

FOR THE RESPONDENT:

Daniel M. Bertolino

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-70
OAL DOCKET NO. CCC 6829-83

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission, upon the filing of an Initial Decision by the Office of Administrative Law on November 20, 1984, finding that Boardwalk Regency Corp.'s Dream Machine advertisements and promotional campaign violated the Casino Control Act and attending regulations by providing information about odds and by being misleading, and finding no violation regarding the allegations in the complaint pertaining to offering alcoholic beverages and to barking; and the ALJ having recommended a civil penalty totaling $30,000; and Boardwalk Regency Corp. having filed exceptions to the Initial Decision, specifically objecting to that portion of the decision finding the promotional campaign to be misleading, and arguing that the recommended penalty was excessive, and the Division of Gaming Enforcement, having filed exceptions to the Initial Decision, objecting to the finding that no barking had occurred and asserting that the penalty should be increased; and the Commission having considered the

entire record of these proceedings; and the Commission having resolved at its public meeting of January 16, 1985, to affirm and adopt the Initial Decision insofar as it found violations for advertising information about odds and misleading advertising and found no violation regarding barking, and to modify the Initial Decision to find a violation concerning the offer of alcoholic beverages; and the Commission having further resolved to modify the Initial Decision to make an additional finding of fact that there existed other dollar slot machines in Atlantic City which exceeded the payout percentage of Boardwalk Regency Corp.'s Dream Machine; and the Commission having further resolved to impose a civil monetary penalty as follows: (1) for advertising information about odds - $40,000, (2) for misleading advertising - $30,000, and (3) for offering alcoholic beverages - $5,000 - for a total of $75,000,

IT IS on this 26th day of April, 1985, ORDERED that the Initial Decision of the ALJ is affirmed and adopted insofar as it found violations for advertising information about odds and misleading advertising and found no violation regarding barking.

IT IS FURTHER ORDERED that the Initial Decision is modified to find a violation concerning the offer of alcoholic beverages.

IT IS FURTHER ORDERED that the Initial Decision is modified to make an additional finding of fact that there existed other dollar slot machines in Atlantic City which

exceeded the payout percentage of Boardwalk Regency Corp.'s Dream Machines.

IT IS FURTHER ORDERED that a civil penalty be imposed totaling $75,000.

IT IS FURTHER ORDERED that copies of this final order be served upon Boardwalk Regency Corp. and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
Walter N. Read, Chairman

By _____
Dennis Daly
Senior Assistant Counsel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-70

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Walter N. Read, Chairman
E. Kenneth Burdge, Vice Chairman
Joel R. Jacobson, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For the Division of Gaming Enforcement:

Katherine A. Smith, Deputy Attorney General

For Boardwalk Regency Corporation:

J. Michael Nolan, Jr., Esq.,
Pitney, Hardin, Kipp & Szuch

For the Casino Control Commission:

Dennis Daly, Senior Assistant Counsel
Steven M. Ingis, Assistant Counsel

PROCEDURAL HISTORY

This matter arises from a complaint of the Division of Gaming Enforcement (DGE) against Boardwalk Regency Corporation (BRC) filed with the Commission on March 21, 1983, wherein it is alleged that BRC violated various provisions of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.,[1] and attending regulations with regard to its advertising and promotional campaign concerning a one dollar slot machine known as the Dream Machine. More specifically, BRC is charged with the following: (1) providing information concerning gambling odds in its advertisements, in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b); (2) advertising in a misleading and deceptive manner, in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.2(e); (3) offering alcoholic beverages to the public by way of its advertisements, in violation of N.J.S.A. 5:12-103(g)(1); and (4) using a barker to induce people to gamble, in violation of N.J.S.A. 5:12-100(1).[2]

On March 16, 1983, the DGE petitioned the Commission for a cease and desist order against BRC, enjoining BRC's ongoing advertising campaign for its Dream Machines. Pursuant to

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1. Throughout this opinion, provisions of the Act may be cited by section number only. The complete citation may be obtained by adding the prefix "N.J.S.A. 5:12- ."

2. The fourth allegation was added by amended complaint filed on October 24, 1983.

N.J.S.A. 5:12-109(a)(3), the Commission issued the cease and desist order on March 17, 1983 (Exhibit J-11). Thereafter, the DGE filed the within Complaint.

A prehearing conference was held on August 11, 1983, before Commissioner Joel R. Jacobson. Subsequently, on August 26, 1983, the Commission transmitted the case to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A second prehearing conference was conducted on October 24, 1983, before an Administrative Law Judge (ALJ). On that date, the ALJ granted the DGE's motion to amend its complaint to charge a violation of section 100(1) of the Act. Hearing dates were initially scheduled in January; following several adjournments, the hearing commenced on April 16, 1984.

Prior to the hearing, the parties had entered into a stipulation of facts, accompanied by nine exhibits (Exhibit J-1A through I).

On April 19, 1984, the DGE made a motion to supplement the evidentiary record with certain documents, known as slot movement logs, from the Tropicana Hotel and Casino and Harrah's Marina Hotel and Casino. On May 25, 1984, the ALJ heard oral argument on the motion by means of a telephone conference. On June 20, 1984, the ALJ ruled that there was a lack of authentication and an inadequate foundation to allow the admission of these documents. However, the judge further ordered that the DGE would be permitted to attempt to supplemen

the record at an additional hearing, pursuant to N.J.A.C. 1:1-15.2(a), (b) and (d) and N.J.A.C. 1:1-16.1.

On July 20, 1984, the additional evidentiary proceeding was conducted at which time the DGE attempted to supplement the evidentiary record with the aforementioned slot movement logs. The ALJ denied the DGE's motion.

On November 5, 1984, the ALJ issued an initial decision,[3] concluding that BRC's Dream Machine advertisements and promotional campaign provided information about odds and were misleading. He further ruled that the DGE had failed to establish that BRC's advertising and promotional campaign impermissibly made an offer of alcoholic beverages or that barking had occurred. The judge recommended the imposition of a civil monetary penalty for the two violations in the amount of $30,000.

BRC filed exceptions to the initial decision, specifically objecting to that portion of the decision finding the promotional campaign to be misleading. In addition, BRC argued that the recommended fine was excessive. The DGE also filed exceptions, objecting to the finding that section 100(1) of the Act (barking) was not violated, and asserting that the penalty should be increased.

FACTS

Prior to the Commencement of the hearing, the parties

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3. For convenient reference, the initial decision is appended hereto as A1 through A15.

agreed to a stipulation of facts. (J-1A to I). Based on the stipulation, the ALJ made certain findings of fact which we hereby adopt. Nevertheless, in the interest of clarity, we will briefly recount the essential facts of this case. We will also address the factual findings made during the evidentiary hearing and modify the initial decision in certain particulars as hereafter noted.

On or about December 12, 1982, BRC placed a "tease" advertisement in the Atlantic City Press which stated that "the Dream Machines are coming to Caesars." Similar advertisements appeared subsequently in the Atlantic City Press and Atlantic City Magazine. On or about February 24, 1983, BRC commenced a multi-media advertising campaign to promote its Dream Machines. Thereafter, on or about March 1, 1983, advertisments placed by BRC promoting the Dream Machines appeared in approximately 25 newspapers and three magazines as well as on numerous billboards and transit vehicles.

The advertisements which appeared in the newspapers and magazines used advertising slogans such as "win more, play longer, at the most exciting one dollar slots in Atlantic City history"; "the most beautiful odds in town"; "the best odds"; and "as a Caesars one dollar slot player, we'll make sure you always have drinks and change."

In conjunction with the advertising campaign, BRC issued a press release on March 9, 1983, in which it stated that the

Dream Machines "offer the best odds in Atlantic City's history" and that the "Dream Machines' true odds are 95% return, while our nearest competitors' odds on dollar slots, in January, were only an 89% return." As the ALJ found, the Dream Machine's payment percentage was 95%. The payout percentage for all of BRC's dollar slot machines in January 1983 was an average of 87.3%. The best average return for a competitor of BRC on all of its dollar slots in January 1983 was an average payout of 89%.

BRC also mailed a promotional brochure about the Dream Machine to approximately 39,000 casino patrons. These brochures provided the same information contained in the newspaper and magazine advertisements, to the effect that the Dream Machines offered the best and "most beautiful odds" in Atlantic City. In addition, BRC distributed buttons and cards to its casino floor personnel. The buttons stated, "ask me about Dream Machines." The cards contained printed information about the Dream Machine, including the statement that, "Dream Machines have the highest return percentage to one dollar slot plays in Atlantic City: 95% versus an average of no more than 89% at any other casino in town." The cards also contained the instruction that casino personnel will make sure that patrons, "will always have plenty of drinks and change."

As of March 1, 1983, there were approximately 100 Dream Machines in operation at BRC. On November 4, 1983, there were 158 such machines.

On March 17, 1983, the Commission issued a cease and desist order requiring BRC to stop the advertisements concerning the Dream Machine, as well as the buttons and cards which were distributed to casino personnel. BRC complied with this order.

The above findings of fact were derived from the parties' stipulation of facts. The following factual findings are drawn from the testimony presented at the administrative hearing. In this regard, we adopt the ALJ's findings of fact with respect to the testimony of Louise Patterson, an Atlantic City resident who patronizes the casinos once or twice a month. Ms. Patterson went to Caesar's on March 24, 1983, in response to an advertisement she had seen in Philadelphia Magazine extolling the virtues of the Dream Machine, including the claim of the best odds in Atlantic City and the opportunity to play longer and win more. She played the machine and, after winning nothing with her $10, asked a security guard for a drink. She was told that the casino had just opened and that no drinks were available.

Bruce R. Lampa, an expert in the field of slot machine operation, who is in charge of the DGE's Slot Machine Unit, testified concerning monthly Electronic Data Processing (EDP) reports which show the percentage payout for each slot machine at the licensed casinos in Atlantic City. Lampa stated that the EDP reports revealed that Harrah's Marina Hotel and Casino had six one dollar slot machines in December 1982 and March 1983 which had a payout percentage greater than 95% and that the Tropicana had seven one dollar slot machines in October 1982 and

March 1983 which had a payout percentage greater than 95%. The ALJ excluded Lampa's testimony and denied the admission of the EDP reports on the ground that this evidence was irrelevant because it did not specifically pertain to the month of January 1983.

Upon careful reflection, we find this evidentiary ruling to be erroneous and therefore modify the initial decision accordingly. We perceive no reason in law or logic to limit the DGE's proofs in this regard to the month of January 1983. The complaint alleged that the advertising and promotional campaign concerning the Dream Machines were misleading, without limiting the period of that violation to January 1983. Indeed, it is undeniable that the advertising campaign was in operation during the March 1983 period for which the EDP reports were offered. We also note the testimony of Louise Patterson who indicated that she had been enticed by an advertisement in March 1983 to use the Dream Machine. Moreover, the exhibits which were stipulated into evidence by the parties and accepted as fact by the ALJ did not, with the sole exception of the press release, specifically limit the period in question to January 1983. Rather, the advertisements simply indicated that the best odds in Atlantic City were available.

The Commission agrees with the ALJ's subsequent assessment of this matter as stated in his initial decision at

page 11, wherein he seemingly contradicted his evidentiary ruling and discounted BRC's contention that January 1983 should be the only relevant month concerning advertisements dealing with a comparison of payout percentages. Accordingly, we conclude that the reports and attending testimony of Bruce Lampa should have been admitted. In addition, we note the testimony of Paul Tjoumakaris, Slot Manager at Caesars, who acknowledged that there was a possibility that more than one dollar slot machine at another casino offered a payout percentage of 95% or better.

CONCLUSIONS OF LAW

The DGE has the burden of proving the within charges against BRC by a preponderance of evidence. In his initial decision, the ALJ ruled that the DGE sustained its burden regarding Counts I and II (odds and misleading advertising) but not as to Counts III and IV (offer of alcoholic beverages and barking). After reviewing this matter in its entirety, the Commission, for reasons set forth below, affirms and adopts the conclusions of the ALJ pertaining to odds, misleading advertising and barking. We modify the ruling regarding the unlawful offer of alcoholic beverages to find a violation of N.J.S.A. 5:12-103(g)(1).

A. Did BRC's advertisements improperly provide information about gaming odds?

Pursuant to N.J.S.A. 5:12-70(o), the Commission is empowered to promulgate regulations pertaining to advertisements by casino licensees. Section 70(o) provides in part that these regulations:

> ...shall not prohibit the advertisement of casino location, hours of operation, or types of games and other amenities offered, but in no circumstance shall permit the advertisement of information about odds, the number of games, or the size of the casino...(emphasis added).

Pursuant to this legislative directive, the Commission promulgated a regulation, N.J.A.C. 19:51-1.3(b), which expressly prohibits advertisements which divulge any information concerning gambling odds.[4]

BRC stipulated to the fact that it placed advertisements describing the Dream Machine in numerous newspapers and magazines and on billboards and transit vehicles. It also admitted to mailing brochures to approximately 39,000 of its casino patrons. The advertisements included such statements as "you get the most beautiful odds in town," and "the best odds and the best treatment." In addition, BRC's press release of March 9, 1983, offered in conjunction with the promotional

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4. N.J.A.C. 19:51-1.3(b) provides:

> No advertising shall divulge any information concerning the size of the casino, gambling odds available or the numer of games at the casino. Advertising may divulge, however, the location of the casino, its hours of operation, amenities available or the types of games available.

advertisements, stated "these new machines offer the best odds in Atlantic City history," and "the Dream Machine's true odds are a 95% return."

Clearly, such advertisements unlawfully divulge information concerning gambling odds available. BRC's assertion that the regulation proscribes only specific numerical information ignores the plain language and intent of the statute as well as prior Commission rulings. We have previously held that the conveyance of any information about odds is strictly prohibited by section 70(o). See, e.g., In the Matter of a Petition of BRC for a Declaratory Ruling as to the Applicability of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b) to Notices of Availability of Supplemental Wagers Under N.J.S.A. 19:47-1.6, Petition No. 278101 (1982); State v. G.N.A.C. Corp. Docket No. 82-34 (1983); State v. Greate Bay Hotel & Casino, Inc., Docket No. 83-29 (1984).

Moreover, as the ALJ ruled, there is also no merit to BRC's claim that its press release did not constitute advertising. "Advertisement" is defined in Black's Law Dictionary (Rev. 4th Ed.) as:

> Notice given in any manner designed to attract public attention...Information communicated to the public, or to an individual concerned, as by handbills or the newspaper...(citations omitted).

BRC's obvious purpose in issuing this press release was to make the public aware of its Dream Machines. The press release therefor constitutes an advertisement as that term is used in

section 70(o) and N.J.A.C. 19:51-1.3(b). It is also undeniable that the release specifically referred to numerical odds. Thus, even under BRC's theory of what constitutes impermissible advertising of gambling odds, this press release violated the regulation prohibiting such advertisements.

B. Were BRC's Advertisements misleading and deceptive?

Pursuant to section 70(o) of the Act, the Commission is empowered to promulgate regulations:

> Governing the advertising of casino licensees, their employees and agents, with the view toward assuring that such advertisements are in no way deceptive. (Emphasis added).

The Commission adopted N.J.A.C. 19:51-1.2(e), which provides:

> Advertising shall be based upon fact, and furthermore, none of it shall be false, deceptive or misleading in any manner whatsoever. Without limitation as to the generality of the foregoing requirement such advertising shall conform to applicable provisions of the relevant state and federal law which proscribe false advertising.

N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act, which is incorporated by reference in the foregoing regulation, provides:

> The act, use or employment by any person of any...deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sales or advertisement of any merchandise..., whether or not any person has in fact been misled or damaged thereby, is declared to be unlawful practice.

The ALJ ruled that sufficient evidence was presented to show that BRC's advertisement slogans "the best odds" and "win more, play longer," were misleading. He rejected BRC's contentions that the statements were accurate and that it was never proven that any competitor afforded better odds. BRC reasserted this position in its argument before the Commission.

It was undisputed that the Dream Machine's true payout percentage during the months of January through March 1983 was 95%. The highest average payout percentage for all one dollar slot machines of any of BRC's competitors in January 1983 was 89%. However, this fact is not conclusive. As the ALJ observed, when comparing these percentage payouts it is essential to realize that the Dream Machines are only one type of dollar slot machine and that their payout percentage is being compared with the average payout percentage for all one dollar slot machines of BRC's competitors. Thus, a given slot machine of a competitor might have had a percentage greater than 95%, since the 89% figure reflects an average percent return. Accordingly, we conclude that the advertisements which did not reveal that the assertion "the best odds" was based on a comparison of one type of dollar slot machine, the Dream Machine, to the average percentage payout of all dollar slot machines of a competitor, had the capacity to mislead.

In determining the question of whether these advertisements violated section 70(o) of the Act or the pertinent Commission regulation, 19:51-1.2(e), the standard to

be applied is whether the advertising has the capacity to mislead or possesses the likelihood of deception. By its nature, this decision requires a determination that relies heavily on inferences and pragmatic judgment. The statute and regulatory provisions are aimed at the overall tenor of an advertisement and whether the advertisement read as a whole has the capacity or likelihood to deceive. As noted in Aronberg v. F.T.C., 132 F. 2d 165, 167 (7 Cir. 1942):

> ...[t]he cardinal factor is the probable effect which the advertiser's handiwork will have upon the eye and mind of the reader...The buying public does not ordinarily carefully study or weigh each word in the advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also all that is reasonably implied.

See also In re Shack, 177 N.J. Super. 358, 363 (App. Div. 1981).

In this case, the advertisements represented that a patron would be able to win more money by playing the Dream Machines at Caesars because these machines paid out better than any other dollar slot machine. The failure to advise the public that these representations were based on comparisons with the average percentage payout of other machines is critical because such an omission gives rise to the capacity to mislead. If so advised, a patron could reasonably infer the possibility that some machines offered higher payouts. Without such a representation, the patron is left with the impression that the Dream Machines compared favorably with any other machine ever in

use in Atlantic City. Testimony offered at the hearing demonstrated otherwise, revealing that at least thirteen dollar slot machines in operation during October 1982 and March 1983 offered payout percentages equal to or greater than 95%. The ALJ did not consider this testimony in reaching his decision. However, even apart from such evidence indicating the existence of other higher-paying machines, there was sufficient evidence in the record for the judge to find a violation. Accordingly, although we have revised the initial decision to allow this evidence and have accepted the evidence of higher paying machines during the relevant period as fact, our decision would be the same even absent the additional evidence.

C. Did BRC's advertisements and promotional campaign constitute an unlawful offer of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(1)?

N.J.S.A. 5:12-103(g)(1) provides in pertinent part that no alcoholic beverages are to be offered unless so requested by the patron. See also N.J.A.C. 19:50-1.7(a). BRC's advertisements and promotional brochures which were mailed by BRC to approximately 39,000 casino patrons contained the following statement:

> As a Caesars one dollar slot player,
> you'll really enjoy the VIP treatment.
> We'll make sure you always have drinks
> and change.

In addition, the informational cards carried by BRC employees relative to the Dream Machine contained the instruction that

casino personnel will make sure that patrons "always have plenty of drinks and change."

The DGE maintained before the ALJ that the promotional brochures constituted an unlawful offer of alcoholic beverages, within the purview of section 103(g)(1) of the Act. BRC asserted that its promotion did not violate this section because the term "alcoholic beverage" was not used nor did it specifically offer anything to patrons. The ALJ rejected BRC's first contention, concluding that it was reasonable to infer that the word "drinks" in the advertisements referred to alcoholic as well as non-alcoholic beverages. We concur with this finding that the promotion concerned alcoholic beverages.

A similar argument was previously made before the Commission by Bally's Park Place, Inc. with respect to a two-for-one promotion. See State v. Bally's Park Place, Inc., Docket No. 82-64 (1984). In that instance, Bally asserted that a two-for-one promotion was only prohibited if it conditioned receipt of a free drink upon the purchase of an alcoholic beverage, whereas Bally permitted the customer the option of purchasing a non-alcoholic beverage. In adopting the initial decision of Hearing Commissioner Carl Zeitz, the Commission rejected Bally's claim and ruled it was irrelevant that patrons could have purchased non-alcoholic beverages because the option of purchasing alcoholic beverages clearly existed. The same conclusion is warranted in this case.

Having found that alcoholic beverages were involved, the ALJ then turned to the question of whether an offer had been made pursuant to section 103(g)(1). He concluded that it was unreasonable to infer that the words, "we'll make sure you always have drinks and change," indicated that alcoholic beverages would be available for consumption or offered absent a request by the patron. The ALJ determined these words to mean that if a patron requested an alcoholic beverage, BRC employees would make sure the patron received the beverage and, therefore, there was no violation. We disagree with the ALJ's conclusion and hold that the advertisements violated section 103(g)(1).

The statute clearly prohibits a casino licensee from attempting to promote drink orders and from initiating the solicitation or offer of alcoholic beverages to a patron. The intent of the law is that the patron must initiate any request. In this instance, the licensee initiated the process by virtue of the advertisements, and in effect, invited and encouraged alcoholic consumption. Such action by BRC is contrary to the intent and spirit of the law to restrict activities which are designed to cause or which result in undue stimulation of alcoholic consumption on the casino floor. There is no mention in the advertisements that a patron would have to request the drink, only that BRC would supply it to players.

The policy considerations of section 103(g)(1) dictate against the ALJ's conclusion. In adopting this provision the Legislature was attempting to strike a compromise between those

parties who feared the devastating effect upon the gaming patron of the combination of alcohol and gaming, and the casino licensees who asserted that the availability of liquor on the casino floor was necessary to attract players accustomed to the so-called "Nevada style" of gaming. The resulting compromise was designed to prevent the casinos from doing anything to actively encourage drinking by patrons, while still making liquor available upon request. The purpose was to make it somewhat more difficult to obtain a drink by requiring the patron to take the initiative rather than the casino. The focus is on which party takes the initiative. If, as in this case, the licensee attempts to promote alcoholic consumption or exerts pressure, however subtle, upon the patron, there is a violation. Further, a sensible reading of the advertising copy as a whole would convey the impression that a Dream Machine player is a "VIP" and thus entitled to free drinks in the same manner as other preferred customers. Ms. Patterson's testimony confirms this inference. Thus, we modify the initial decision to find a violation of section 103(g)(1).

D. Did BRC use a barker to promote the Dream Machine?

Pursuant to N.J.S.A. 5:12-100(1):

> It shall be unlawful for any casino licensee or his agents or employees to employ, contract with, or use any shill or barker to induce any person to enter a casino or play at any game or for any purpose whatsoever.

The DGE contended that the buttons worn by BRC casino personnel, which stated "Ask Me About Dream Machines," together with the printed cards carried by BRC employees, which contained information they were to impart to patrons when asked about the Dream Machines, constituted a violation of N.J.S.A. 5:12-100(1). The ALJ disagreed and ruled that no violation occurred. He

concluded that the buttons were informational and passive in nature and were therefore outside the purview of the Act. The DGE filed an exception, urging the Commission to modify this portion of the initial decision as too narrow in scope in attempting to construe the barking provision of the Act.

The terms "barking" or "barker" are not defined in the Act nor is there any legislative history surrounding section 100(1) to assist in determining its proper parameters. A barker is commonly thought of as a person who stands outside a theater, store or carnival trying to attract customers by calling out to passersby to enter. The solicitations are frequently made in a loud, aggressive fashion, although it is not altogether clear that this aspect is necessary to constitute barking. Moreover, in the context of casino gaming, it is not necessary that the barker be situated outside of the casino.

To determine whether the barking provision has been violated we must consider not only the substance of the message conveyed but also the manner and method of the delivery. This reflects the fact that the Casino Control Act, taken as a whole, strives not only for the prevention of a "honky-tonk" atmosphere, but also for the maintenance of a facility in which the inducement to gamble is not so intrusive as to be overwhelming.

Upon careful review of this record, we fail to find sufficient evidence of a violation of section 100(1). No proofs were introduced to show that the information cards accompanying the buttons were ever utilized or that patrons actually inquired

about the Dream Machine. There is also no indication of the manner in which the message would be conveyed to the public. Thus, we are left with only the buttons which we find to be more informational than intrusive. We conclude that the buttons alone did not create the kind of atmosphere connoted by the term barking. Accordingly, we adopt the ALJ's ruling that no violation of section 100(1) was proven.[5]

PENALTY

BRC has argued in its brief that, pursuant to N.J.S.A. 5:12-129, the penalty for all misconduct arising out of one promotional campaign, such as the Dream Machine, may not exceed $50,000. We note, however, that counsel for BRC did not appear to seriously pursue this theory at oral argument. In any event, we adamantly reject such a notion. The statute's intent was merely to impose a ceiling on the fine that could be imposed for an individual violation and was not designed to limit the ability of the Commission to impose multiple fines for multiple infractions, in an amount exceeding the $50,000 figure. In this case, we have found three separate violations. They are independent infractions although originating from the same promotional campaign. Accordingly, three separate fines, each with a potential maximum of $50,000, could be imposed.[6]

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5. A word of caution is in order. Our holding in this case is not a blanket approval of the use of buttons similar to those employed here. Allegations of a violation of section 100(1) will require close scrutiny on a case-by-case basis.

6. Since the Division only charged three violations of the type we have herein affirmed, we need not comment on whether additional violations may have been charged or found. However, we note that under section 123 of the Act, a continuing violation of any provision of the law is deemed to be a separate offense on each day it occurs.

Pursuant to section 130, the Commission shall consider the following factors in imposing an appropriate sanction for violations of the Act:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;

b. The seriousness of the conduct of a licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of the Act or regulations promulgated thereunder.

c. Any justification or excuse for such conduct by the licensee or registrant.

d. The prior history of the particular licensee or registrant involved with respect to gaming activity.

e. The corrective action taken by the licensee or registrant to prevent future misconduct of like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant.

We view the infraction relating to the advertisement of odds as particularly flagrant, warranting stern punishment. There can be no justification for implementing this aspect of the promotion in light of the clear language of the statute. Moreover, BRC's prior experience concerning advertisements regarding odds must also be considered. BRC began this endeavor one year after the Commission specifically ruled that it was not to provide information about odds by way of advertisements. See In the Matter of a Petition of BRC, supra. Clearly, BRC knew that such action was unlawful in light of its prior experience

and that of other licensees in similar circumstances. See, State v. G.N.A.C. Corp., supra, and State v. Greate Bay Hotel and Casino, supra.

BRC has represented that similar advertisements are commonplace in Atlantic City and maintains that this fact should mitigate punishment. If what BRC suggests is indeed true, we trust that our decision in this case will serve to deter other casino licensees as well as BRC from using advertisements of this nature.

With respect to the remaining charges, the potential risk to the public engendered by misleading advertising and improper inducements to gamble must be considered as an aggravating factor. On the other hand, the fact that BRC may have been unaware that its conduct was prohibited with respect to the offer of alcoholic beverages is a mitigating factor in considering an appropriate penalty. N.J.S.A. 5:12-130(g).

Accordingly, we impose the following monetary penalty upon the respondent: (1) for advertising information about odds - $40,000; (2) for misleading advertising - $30,000, and (3) for offering alcoholic beverages - $5,000 - for a total of $75,000.

CONCLUSION

For the foregoing reasons, we affirm and adopt the initial decision insofar as it found violations for advertising information about odds and misleading advertising and the finding of no violation regarding barking. We modify the

initial decision to find a violation of section 103(g)(1) of the Act concerning the offer of alcoholic beverages. In addition, we modify the initial decision to make an additional finding of fact that there existed other dollar slot machines in Atlantic City which exceeded the payout percentage of BRC's Dream Machines. Finally, we impose a civil monetary penalty totaling $75,000.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman

E. Kenneth Burdge, Vice Chairman

Joel R. Jacobson, Commissioner

Carl Zeitz, Commissioner

DATED: April 24, 1985.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6829-83

AGENCY DKT. NO. 83-70

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

Katherine A. Smith, Deputy Attorney General, for petitioner (Irwin I Kimmelman, Attorney General of New Jersey, attorney)

J. Michael Nolan, Jr., Esq., for respondent (Pitney, Hardin, Kipp and Szuch, attorneys)

Record Closed: September 5, 1984 Decided: November 5, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement against Boardwalk Regency Corporation (BRC) filed with the Casino Control Commission on March 21, 1983, pursuant to N.J.S.A. 5:12-76(a). In its complaint, the Division alleges that BRC has violated various provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) regulations adopted thereunder, and other statutes and regulations, with regard to its advertising and promotional campaign concerning a one dollar slot machine known as the Dream Machine. The Division seeks imposition of an appropriate penalty, in accordance with the standard set forth at N.J.S.A. 5:12-130. The issues to be determined in this matter are as follows:

New Jersey Is An Equal Opportunity Employer

1. Whether BRC's Dream Machine advertisements improperly provided information about gaming odds, in violation of section 70(o) of the Casino Control Act.

2. Whether BRC's Dream Machine advertisements were deceptive and misleading, in violation of N.J.S.A. 5:2-70(o), N.J.S.A. 56:8-2 and N.J.A.C. 19:51-1.2(e).

3. Whether BRC's Dream Machine advertisements impermissibly made an offer of alcoholic drinks, in violation of section 103g(1) of the act and N.J.A.C. 19:50-1.7(a).

4. Whether BRC's Dream Machine advertising constitutes an improper inducement to gamble, in violation of section 100(1) of the Casino Control Act.

PROCEDURAL HISTORY

On March 16, 1983, the Division of Gaming Enforcement petitioned the Casino Control Commission for a cease and desist order against the respondent Boardwalk Regency Corporation, which order would enjoin BRC's ongoing advertising campaign concerning certain dollar slot machines referred to as Dream Machines. Pursuant to N.J.S.A. 5:12-109a(3), the Commission issued the cease and desist order on March 17, 1983 (Exhibit J-1I). On March 21, 1983, the Division filed its formal complaint against BRC with the Commission.

The first prehearing conference in this matter was held on August 11, 1983, before the Honorable Joel R. Jacobson, Commissioner. On August 26, 1983, the Commission transmitted the matter to the Office of Admininstrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A second prehearing conference was held on October 24, 1983, before Administrative Law Judge Norman D. Smith. On that date, Judge Smith granted the Division's motion to amend its complaint, which had been filed on March 21, 1983. The factual and legal issues raised by the amended complaint were clarified and hearing dates were scheduled for January 17 and 18, 1984.

At the request of the respondent BRC, the hearing was adjourned and rescheduled for March 9, 1984. A second request for an adjournment by BRC was also granted and the matter was rescheduled for hearing on April 16, 1984.

Prior to the scheduled hearing on April 16, 1984, the parties entered into and agreed upon a detailed and comprehensive stipulation of facts, which was accompanied by nine exhibits (Exhibit J-1A through I). Immediately prior to the taking of testimony on the morning of April 16, 1984, this matter was reassigned from Judge Smith to the undersigned for hearing.

On April 19, 1984, the Division made a motion to supplement the evidentiary record with certain documents, known as slot movement logs, from the Tropicana Hotel and Casino and Harrah's Marina Hotel and Casino. Telephone oral argument was heard on this motion on May 25, 1984. I determined that the moving papers of the Division did not adequately authenticate the slot movement logs and that the papers did not provide an adequate foundation for their admission. However, by order, dated June 20, 1984, I determined that the Division should be permitted to attempt to supplement the evidentiary record at an additional hearing session, pursuant to N.J.A.C. 1:1-15.2(a), (b) and (d) and N.J.A.C. 1:1-16.1. The additional evidentiary proceeding was conducted on July 20, 1984. The record in this matter closed on September 5, 1984, upon receipt of the post-hearing submissions of the parties.

FINDINGS OF FACT

Prior to the commencement of the hearing in this matter, counsel for the parties agreed to a stipulation of facts, with attached exhibits. This stipulation was admitted into evidence as Exhibit J-1A through I. Having reviewed the stipulation of facts and attached exhibits, I make the following findings of undisputed facts:

1. On or about December 12, 1982, a tease advertisement placed by BRC appeared in The Atlantic City Press (Exhibit J-1A), stating "The Dream Machines are coming to Caesars."

2. On or about December 18, 1982 and January 1, 1983, a tease advertisement placed by BRC appeared in The Atlantic City Press and the Atlantic City Magazine, respectively (Exhibit J-1B).

3. On or about February 24, 1983, BRC launched a multi-media advertising campaign to promote its dollar slot machines, known as Dream Machines.

4. On or about March 1, 1983, advertisements placed by BRC promoting the Dream Machines appeared in approximately twenty-five (25) newspapers, three (3) magazines, on billboards and on transit vehicles.

5. The advertisements which appeared in the newspapers and magazines used advertising slogans such as "Win more, play longer, at the most exciting one dollar slots in Atlantic City history;" "The most beautiful odds in town;" "the best odds;" and "As a Caesars one dollar slot player, we'll make sure you always have drinks and change" (Exhibit J-1D).

6. In conjunction with its advertising campaign concerning the Dream Machines, a statement to the press was released by BRC on March 9, 1983 (Exhibit J-1E). In this press release, BRC management stated that the Dream Machines "offer the best odds in Atlantic City's history" and that the "Dream Machines' true odds are a 95% return, while our nearest competitor's odds on dollar slots, in January, were only an 89% return" (Exhibit J-1E).

7. The Dream Machine's true payout percentage during the period relevant to this proceeding was 95%. The payout percentage for all of BRC's dollar slot machines in January 1983 was an average of 87.3% (Exhibit R-1). The best average return for a competitor of BRC on all of its dollar slots in January 1983 was an average payout of 89% (Exhibits R-2 through R-9).

8. Also in conjunction with its advertising campaign, BRC mailed a promotional brochure about the Dream Machines to approximately 39,000 patrons. The promotional brochure provided the same information as was contained in the magazine and newspaper advertisements (Exhibit J-1F).

9. In conjunction with the promotion of the Dream Machines, BRC also distributed buttons and cards to its casino floor personnel (Exhibit J-1G).

The buttons state, "Ask me about Dream Machines." The cards, which are marked "For Caesars employees only," contain printed information about the Dream Machine in the form of responses to the question, "What is a Dream Machine?" Included in the information on the card is the statement that, "Dream Machines have the highest return percentage to one dollar slot players in Atlantic City: 95% verses an average of no more than 89% at any other casino in town." The card also contains the instruction that casino personnel will make sure that patrons, "Always have plenty of drinks and change."

10. As of March 1, 1983, there were approximately 100 Dream Machines in operation on BRC's casino floor (Exhibit J-1G). As of November 4, 1983, there were 158 Dream Machines in operation on BRC's casino floor (Exhibit J-1H).

11. On March 17, 1983, as a result of the petition filed by the Division of Gaming Enforcement, the Casino Control Commission issued a cease and desist order requiring BRC to halt the utilization, in any manner whatsoever, of the advertisements which appeared in the aforementioned newspapers and magazines, as well as the buttons and cards which were distributed to casino personnel. BRC was further ordered to submit any further advertising or promotional campaign material concerning the Dream Machines to the Commission for approval prior to the utilization of said material (Exhibit J-1I).

12. Prior to the placing of the advertisements concerning the dream machines, and prior to distributing the aforementioned buttons and cards to its casino employees, BRC did not seek a declaratory ruling from the Commission, pursuant to N.J.A.C. 19:51-1.2(f), on the propriety of the advertisements.

13. BRC has complied with the Commission's cease and desist order issued on March 17, 1983.

Testifying on behalf of the Division of Gaming Enforcement was Louise Patterson, an Atlantic City resident who is a patron of licensed casinos once or twice a month. According to Ms. Patterson, she went to Caesars Boardwalk Regency on March 24, 1983, to follow up on an advertisement she had seen in Philadelphia Magazine. This advertisement extolled the virtues of the Dream Machine, including offering the best odds in Atlantic City and the opportunity to play longer and win more. After some difficulty, Ms. Patterson located a Dream Machine at the end of a corridor and proceeded to play the machine with ten dollars. After winning nothing, she looked for a security guard and asked for a drink. Ms. Patterson was told that the waitresses had not started working yet that morning, since the casino had just opened, and no drinks were available. The testimony of Ms. Patterson is undisputed and believable, and is thus **FOUND AS FACT.**

The Division of Gaming Enforcement also offered the testimony of Chief Engineer Bruce R. Lampa, who is in charge of the Division Slot Machine Unit. After being qualified as an expert on slot machines, Mr. Lampa testified concerning monthly Electronic Data Processing (EDP) reports which show the percentage payout for each slot machine at each licensed casino. Pursuant to the testimony of Mr. Lampa, the Division offered EDP reports from Harrah's Marina Hotel and Casino for December 1, 1982 and March 16, 1983 (Exhibit D-2 for identification). The Division also offered EDP reports from the Tropicana Casino for October 28, 1982 and March 22, 1983 (Exhibit D-3 for identification). Reading from these documents, Mr. Lampa stated that Harrah's had six one dollar slot machines in December 1982 and March 1983 which had a payout percentage greater than 95%, and the Tropicana had seven one dollar slot machines in October 1982 and March 1983, which had a payout percentage greater than 95%. However, counsel for BRC objected to the admission of the EDP reports, contending that January 1983 was the only month relevant to the issue of whether the Dream Machines actually had the highest payout percentage of one dollar slot machines, since the press release issued that month referred only to competitors' odds on dollar slots in January. Although given the direct opportunity to dispute the assertion that January was the relevant month, counsel for the Division did not do so. I then asked Mr. Lampa if he was able to determine the January 1983 payout percentages from the EDP reports which preceded and followed January 1983 and he repled, "No." As a result, Exhibits D-2 and D-3 for identification were excluded from evidence as not relevant to a material issue since they did not pertain to the month of January 1983. That portion of Mr. Lampa's testimony which was merely a recitation

from these excluded documents cannot be considered for the same reason the documents were excluded. However, the rest of his testimony, including the description of the use of EDP reports, remains in evidence.

Three days after the hearing session on April 16, 1984, the Division of Gaming Enforcement moved to supplement the evidentiary record with certain documents, known as slot movement logs, from the Tropicana Hotel and Casino and Harrah's Marina Hotel and Casino. An additional evidentiary proceeding was conducted on July 20, 1984, at which time the Division of Gaming Enforcement was permitted, in the interests of justice and to aid in the ascertainment of the truth, to attempt to supplement the evidentiary record, pursuant to N.J.A.C. 1:1-15.2 and 16.1. Testifying on behalf of the Division of Gaming Enforcement at the additional evidentiary hearing was William Ronca, who was formerly the slot manager at the Tropicana Hotel and Casino.

It was the testimony of Mr. Ronca that all changes in payout percentages of slot machines would be recorded on slot movement logs, even if the machine was not physically moved from the casino floor. Intending to show that the payout percentages of one dollar slot machines at Harrah's were not changed in Janaury 1983, the Division of Gaming Enforcement offered the slot movement logs for Harrah's for the months of November and December 1982 and January 1983 (Exhibits D-5A to K).

Counsel for BRC objected to the admission of the slot movement logs, arguing that they were irrelevant in the absence of EDP reports which would establish the percentage payouts for individual one dollar slot machines. Counsel for the Division of Gaming Enforcement was asked if she intended to offer the EDP reports. She had indicated at the oral argument on the motion to supplement the evidentiary record that she did not intend to offer the EDP reports and she again stated that she would not offer the reports, but rather, would rely on the testimony of Mr. Lampa in regard to the payout percentage of certain one dollar slot machines. However, as discussed above, that testimony cannot be used to prove the contents of the EDP reports which had previously been excluded from evidence. Since the Division declined to again offer the EDP reports, the offered slot movement logs were not linked to any one dollar slot machine payout percentage figures period, thus, the movement logs had no independent probative value and they were not admitted into evidence.

CONCLUSIONS OF LAW

The Division of Gaming Enforcement has filed its complaint against the respondent BRC pursuant to N.J.S.A. 5:12-76 and 108. The Division contends that the Dream Machine advertising and promotional campaign developed and implemented by the respondent BRC was violative of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3 (b), in that information about odds was advertised; was violative of N.J.S.A. 5:12-70(o), N.J.A.C. 19:51-1.2(e), N.J.S.A. 56:8-2 and N.J.A.C. 13:45(a)-9.2(9), in that the advertising was false, misleading and deceptive; was violative of N.J.A.C. 19:50-1.7(a) in that alcoholic beverages were offered by way of the advertisements; and was violative of N.J.S.A. 5:12-100(l), in that the campaign included instructions to BRC employees to induce patrons to gamble. It is the burden of the Division of Gaming Enforcement to establish its charges against the respondent BRC by a preponderance of the relevant and credible evidence.

Pursuant to N.J.S.A. 5:12-70(o), the Casino Control Commission is empowered to promulgate regulations pertaining to advertisements by casino licensees. Section 70(o) provides in part that these regulations:

> . . . shall not prohibit the advertisement of casino location, hours of operation, or types of games and other amenities offered, but in no circumstance shall permit the advertisement of information about odds, the number of games, or the size of the casino . . . [emphasis added]

Pursuant to this legislative mandate, the Commission promulgated the regulation set forth at N.J.A.C. 19:51-1.3(b), which provides, in part:

> No advertising shall divulge any information concerning the size of the casino gambling odds available or the number of games at the casino . . . [emphasis added]

It is undisputed that BRC's Dream Machine dollar slot machine advertising and promotional campaign included numerous newspaper and magazine advertisements, as well as advertising on billboard and transit vehicles. The advertising campaign also included the mailing of brochures or leaflets about the Dream Machine to approximately 39,000 BRC casino patrons. These advertisements included statements such as, "You get the

most beautiful odds in town," and, "The best odds and the best treatment." In addition, BRC's statement to the press of March 9, 1983, offered in conjunction with the promotional advertisements, stated, "These new machines offer the best odds in Atlantic City history," and, "the Dream Machine's true odds are a 95% return."

It is the contention of BRC that the aforementioned statute and regulation prohibit only specific numerical information about the casino and its games and its odds, rather than mere puffery. BRC argues that since its published advertisements and promotional brochures do not quote or refer to numerical odds or payoff percentages, that they are not violative of the applicable statute or regulations. Further, BRC contends that descriptions such as, "Most beautiful odds," and, "Best odds," are merely words of puffery. Finally, BRC contends that the record in this matter does not establish that its press release was ever published or communicated to the public and that the mere issuing of the release, which admittedly did refer numerically to the Dream Machine's 95% return, did not constitute advertising.

I do not accept the respondent's contentions. It is clear that a statement such as, "best odds," does divulge information concerning gambling odds available, and I do not read in the applicable statutes and regulations any condition which limits the prohibition to reference to numerical odds. Further, it is clear that the purpose of the press release was to advertise the Dream Machine promotion to the public. This advertisement did refer to numerical odds, and it is undisputed that this advertising statement in the form of a press release was issued by BRC on March 9, 1983. Based upon the foregoing discussion, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing that BRC's Dream Machine advertising and promotional campaign provided information about odds in violation of section 70(o) of the Casino Control Act and N.J.A.C. 19:51-1.3(b).

Pursuant to the aforementioned section 70(o) of the Casino Control Act, the Commission is empowered to promulgate regulations:

> Governing the advertising of casino licensees, their employees and agents, with the view toward assuring that such advertisements are in no way deceptive . . . [emphasis added]

Pursuant to the statute, the Casino Control Commission adopted N.J.A.C. 19:51-1.2(e), which provides:

> Advertising shall be based upon fact, and furthermore, none of it shall be false, deceptive or misleading in any manner whatsoever. Without limitation as to the generality of the foregoing requirement such advertising shall conform to applicable provisions of the relevant state and federal law which proscribe false advertising.

N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act, which is incorporated by reference in the foregoing regulation, provides:

> The act, use or employment by any person of any . . . deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with intent that others rely upon such concealment, supression or omission, in connection with the sales or advertisement of any merchandise,. . . whether or not any person has in fact been misled or damaged thereby, is declared to be unlawful practice.

The general advertising practices regulation, N.J.A.C. 13:45(a)-9.2(9), also incorporated by reference in the foregoing regulation, states:

> Without limiting the application of N.J.S.A. 56:8-8.1 et seq., the following practices shall be unlawful with respect to all advertisements: the making of false or misleading representation of facts concerning . . . the nature of an offering.

It is the contention of BRC that its use of superlatives and other representations in its Dream Machine advertisements and promotional campaign was not false, deceptive or misleading. BRC argues that none of its representations were used in a context that was calculated to deceive and that its advertisements were innocuous and fall within a reasonable reading of acceptable advertising practices, as governed by the applicable statutes and regulations. It is BRC's assertion that statements such as "the most exciting one dollar slots in Atlantic City history," are statements of puffery and that statements such as, "Win more, play longer," and, "The best odds," are statements which were based upon fact, within the meaning of N.J.A.C. 19:51-1.2(e).

It is undisputed that the Dream Machine's true payout percentage during the months of January through March 1983 was 95%. I have found that the highest average payout percentage for all one dollar slot machines of any of BRC's competitors in January 1983 was 89%. When comparing these percentage payouts, it is essential to realize that the Dream Machines are only one type of dollar slot machine and that their payout percentage is being compared with the average payout percentage for all one dollar slot machines of BRC's competitors. A given slot machine of a competitor might have had a percentage greater than 95%, since the 89% figure reflects an average percent return. BRC's advertisements which stated that the Dream Machine had, "The best odds," but which did not disclose that this assertion was based on a comparison of one type of dollar slot machine, the Dream Machine, to the average percentage payout of all dollar slot machines of a competitor, had the capacity to mislead. Similarly, the press release which compared the Dream Machine's 95% return to the competitor's 89% return, without mentioning that the 89% return was an average figure, was misleading.

BRC contended at the hearing that January 1983 was the only relevant month concerning advertisements dealing with a comparison of payout percentages. The accuracy of this contention is doubtful, since the majority of advertisements and the press release appeared in March 1983. However, it is true that the press release referred to the competitor's 89% return on one dollar slot machines in January 1983, and the Division of Gaming Enforcement did not dispute BRC's contention that January 1983 was the only relevant month for comparison. Nevertheless, if January 1983 is the only relevant month for comparison, advertisements stating, "The best odds," which appeared in March 1983, have the capacity to mislead because they do not state the comparison is based on percentage payout figures from an earlier month.

Based upon the findings of fact and the foregoing discussion, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing that BRC's Dream Machine advertising and promotional campaign was misleading, within the meaning of sections 70(o) of the Casino Control Act and N.J.A.C. 19:51-1.2(e).

N.J.A.C. 19:50-1.7(a), which regulation was adopted pursuant to N.J.S.A. 5:12-103g(1), provides:

> No food or alcoholic beverage, other than nonalcoholic beverages or garnishments used in the preparation of alcoholic beverages for consumption by the glass shall be sold, given or be available for

> consumption, offered, delivered or otherwise brought to a patron or consumed at a gaming table unless so requested by the patron.

It is undisputed that the Dream Machine advertisements and promotional brochures which were mailed by BRC to approximately 39,000 casino patrons contained the following statement:

> As a Caesars one dollar slot player, you'll really enjoy the VIP treatment. We'll make sure you always have drinks and change.

BRC contends that its Dream Machine advertisements and pomotional devices do not violate N.J.A.C. 19:50-1.7(a) because they do not use the term "alcoholic beverage" and they do not specifically "offer" anything to "patrons." According to BRC, its advertisements merely offered "drinks" to potential patrons, and BRC casino employees did not offer alcoholic beverages to actual patrons, absent their request for the alcoholic beverages.

Since legalized gaming is an activity reserved for adults, it is fair to infer that the word "drinks" in the BRC advertisements and promotional brochures refers to alcoholic as well as non-alcoholic beverages. If BRC wanted to avoid the impression that it was referring to alcoholic drinks, it would have been simple enough to have specified "non-alcoholic drinks" in its advertisements. On the other hand, it is not a fair inference that the words, "we'll make sure you always have drinks and change," mean that drinks will be available for consumption or offered absent a request by the patron. It is fair to infer that these words mean that if a patron requests an alcoholic beverage, BRC employees will make sure the patron receives the beverage. Therefore, based upon the applicable statute and regulations and the foregoing discussion, I **CONCLUDE** that the Division of Gaming Enforcement has not established that BRC's Dream Machine advertising and promotional campaign impermissibly made an offer of alcoholic drinks in violation of N.J.S.A. 5:12-103g(1) and N.J.A.C. 19:50-1.7(a).

Pursuant to N.J.S.A. 5:12-100(l):

> It shall be unlawful for any casino licensee or his agency or employees to employ, contract with, or use any shill or barker to induce any person to enter a casino or play at any game or for any purpose whatsoever.

As part of its Dream Machine promotional campaign, BRC personnel were given buttons to wear which stated, "Ask Me About Dream Machines." Information cards were distributed to BRC employees which were marked "For Caesar's Employees Only," and which contained information which would permit the employees to respond to patrons' questions about the Dream Machines. The Division of Gaming Enforcement contends that the distribution of these buttons and cards to its casino employees evinces BRC's intention to use its employees to induce patrons to gamble, in violation of N.J.S.A. 5:12-100(l). The Division further contends that the entire Dream Machine advertising and promotional campaign developed and implemented by BRC constituted an improper inducement to gamble.

BRC argues that the words, "shill" or "barker" refer to persons and not inanimate objects. Thus, neither the promotional advertising nor the buttons could be characterized as shills or barkers. In addition, BRC contends that "barker" contemplates a person actively inducing people to participate, and that the buttons worn by some BRC employees merely advise their viewers to "ask" about the Dream Machines, rather than actively inducing any person to gamble.

It should be clear that the purpose of any casino advertising or promotional device is to attract customers. The question which must be answered is whether the advertisement or an aspect of the promotional program constitutes an improper inducement to a person to enter a casino or play at any game. The Dream Machine advertisements and promotional devices were essentially informational and passive in nature. I do not read section 100(l) of the Casino Control Act to include the Dream Machine advertising campaign and promotional devices within its prohibition against improper inducements to gamble. Therefore, I **CONCLUDE** that the Division of Gaming Enforcement has failed to establish that BRC's Dream Machine advertising and promotional campaign constituted an improper inducement to gamble, within the meaning of N.J.S.A. 5:12-100(l).

I have **CONCLUDED** that BRC's Dream Machine advertisements and promotional campaign provided information about odds in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(b), and I have **CONCLUDED** that BRC's Dream Machine advertisements and promotional campaign were misleading, in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.2(e). After examining the standards for the imposition of sanctions set forth at N.J.S.A. 5:12-130, including the seriousness of the respondent's

conduct, the risk to the public and to the integrity of gaming operations created by its conduct, and the undisputed compliance of the respondent with the cease and desist order issued on March 17, 1983, I **CONCLUDE** that a monetary penalty in the amount of $30,000 is warranted, pursuant to N.J.S.A. 5:12-130f.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent Boardwalk Regency Corporation be assessed a civil monetary penalty in the amount of $30,000, pursuant to N.J.S.A. 5:12-130 and N.J.S.A. 5:12-129(5).

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 5, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 9, 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

Joint Exhibits:

J-1	Stipulation of Facts, with attached exhibits
J-1A-I	

For the Division of Gaming Enforcement:

D-1	Letter, dated February 22, 1983
D-2	Not in evidence
D-3	Not in evidence
D-4	Not in evidence
D-5A-K	Not in evidence

For the Respondent:

R-1-R-9	CC100 forms for January 1983 for BRC and eight competitors

WITNESSES

For the Division of Gaming Enforcement:

Bruce R. Lampa
Louise Patterson
William Ronca
Michael Allen

For the Respondent:

Paul F. Tjoumakaris

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-246
OAL DOCKET NO. CCC 7352-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. BOARDWALK REGENCY CORPORATION, t/a CAESARS ATLANTIC CITY, PETER BOYNTON, LARRY BERTSCH, G. LINCOLN EBERT, J. WILLIAM HESSEL, CLAIRE LODOVICO, KATHY CAMPELLONE, MICHAEL NEUSTADTER, LARRY WOOLF AND JAMES LENZ, Respondents.	FINAL ORDER

Proceedings in this matter having been held before the Office of Administrative Law; and an initial decision approving the parties' proposed stipulation of settlement having been filed with the Casino Control Commission (Commission); and the parties having agreed to expand the record to include additional supplemental stipulations of fact and exhibits (J-62 to J-69); and the Commission having considered the entire record of these proceedings at its public meetings of October 2, 7 and 9, 1985.

IT IS on this 28th day of October 1985, ORDERED that the initial decision and stipulation of settlement, as supplemented, are approved and incorporated herein by reference; and

IT IS FURTHER ORDERED that, as to respondents Boynton, Campellone and Lodovico, the complaint is dismissed; and

IT IS FURTHER ORDERED that the following respondents pay civil penalties in the amounts designated, which are due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control:

Larry Woolf.	$10,000
Michael Neustadter	7,500
James Lenz	7,500
Larry Bertsch.	5,000

IT IS FURTHER ORDERED that respondent William Hessel pay a civil penalty in the amount of $3,500 and respondent G. Lincoln Ebert pay a civil penalty in the amount of $3,000, each payable over 36 months in equal monthly installments; and

IT IS FURTHER ORDERED that the Certificate of Operation held by respondent Boardwalk Regency Corporation (BRC) is suspended beginning at 10:00 a.m., November 30, 1985, until 9:59 a.m., December 1, 1985; and

IT IS FURTHER ORDERED that, in accordance with the representations of counsel for BRC, all BRC employees scheduled to work on the day of the closing will receive their regular salary, together with all normal benefits and, where appropriate, tip or gratuities; and

IT IS FURTHER ORDERED that, in accordance with the representations of counsel for BRC, casino, cage and accounting

employees will receive training designed to emphasize compliance with the Casino Control Act and Commission regulations; and

IT IS FURTHER ORDERED that BRC provide appropriate notice of closing to the public generally and to those persons or groups which BRC has reason to believe would have patronized the casino on the day of the closing; and

IT IS FURTHER ORDERED that BRC file with the Commission and the Division of Gaming Enforcement no later than November 1, 1985, documents detailing the means by which it intends to comply with the terms and conditions of closure, including but not limited to the compensation of its employees, the basis upon which averaged tip income will be determined, the nature of training to be given to casino, cage and accounting employees and the notice of closing; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondents, the Division of Gaming Enforcement and the Office of Administrative Law within 10 days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

By _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 7352-84

AGENCY DKT. NO. 84-246

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

BOARDWALK REGENCY CORPORATION, T/A CAESAR'S ATLANTIC CITY; PETER BOYNTON; LARRY BERTSCH; G. LINCOLN EBERT; J. WILLIAM HESSEL; CLAIRE LODOVICO; KATHY CAMPELLONE; MICHAEL NEUSTADTER; LARRY WOOLF AND JAMES LENZ,

Respondents.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

J. Michael Nolan, Jr., Esq., for respondent Boardwalk Regency Corporation (Pitney, Hardin, Kipp & Szuch, attorneys)

Anthony R. Mautone, Esq., for respondents Peter Boynton, Larry Bertsch, Claire Lodovico, Kathy Campellone and James Lenz

Brian J. Molloy, Esq., for respondents G. Lincoln Ebert and J. William Hessel (Wilentz, Goldman & Spitzer, attorneys)

Joseph P. LaSala, Esq., for respondent Michael Neustadter (Robinson, Wayne, Levin, Ricio & LaSala, attorneys)

William C. Cagney, Esq., for respondent Larry Woolf (Markey, Dailey & Cagney, attorneys)

Record Closed: September 5, 1985 Decided: September 9, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement (Division), filed with the Casino Control Commission on August 1, 1984, pursuant to N.J.S.A. 5:12-76(a), and subsequently amended, in accordance with N.J.A.C. 1:1-6.3. In its amended complaint, the Division alleges that the respondents failed to satisfy the requirements of, or engaged in practices prohibited by, certain provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), and regulations adopted thereunder (N.J.A.C. 19:45-1.1 et seq.), with regard to the maintenance and operation of a system of internal procedures and accounting controls, the acceptance of cash deposits and cash equivalents, and the maintenance and operation of a casino gaming credit system.

PROCEDURAL HISTORY

Following service of the Division's complaint, the respondents filed their notices of defense. On September 25, 1984, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The first prehearing conference was held on October 17, 1984. Additional prehearing conferences were held on January 25, February 7 and March 18, 1985. The parties subsequently informed the undersigned that they had determined that a mutually satisfactory resolution of the matters in controversy was possible. The parties thereafter reached agreement on and consented to a settlement disposition and the terms of settlement have been expressly set forth in the attached stipulation, which was executed in counterpart.

When the settlement agreement was executed, respondent Bertsch had not yet given his consent to the terms of the stipulation. Thus, Anthony R. Mautone, Esq., signed the stipulation on behalf of respondents Boynton, Lenz, Lodovico, and Campellone, but not on behalf of respondent Bertsch. By letter received September 5, 1985, Mr. Mautone informed the undersigned that he had been authorized to accept the settlement on behalf of respondent Bertsch and he further confirmed that paragraph 156 of the stipulation

should state that respondent Larry Bertsch agrees to pay the sum of $5,000 to the Casino Control Commission as a civil penalty pursuant to N.J.S.A. 5:12-129(5) in full and final settlement of the allegations.

Having reviewed the entire record in this matter, I **FIND:**

1. The terms of settlement in this matter have been incorporated into an executed stipulation, which is attached to this initial decision and which is incorporated herein as if set forth at length. Paragraph 156 of the stipulation is modified as indicated above.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement. The acceptance of the settlement by Mr. Mautone on behalf of respondent Bertsch was confirmed by letter received September 5, 1985.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.A.C. 1:1-17.1, the parties to a contested case may settle the matter by consent and may express the settlement terms in an agreement of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an initial decision which sets forth the settlement terms.

Having found that the terms of settlement, as set forth in the attached stipulation, are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the settlement terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 9, 1985
DATE

Joseph R. Fidler, JS
JOSEPH R. FIDLER, ALJ

Receipt Acknowledged:

September 9 1985
DATE

Nancy O. Stahl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

September 12 1985
DATE

Ronald J. Parks, JS
OFFICE OF ADMINISTRATIVE LAW

bc

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WITNESSES

None

EXHIBITS

See attached Table of Exhibits 1 to 61

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-246
OAL DOCKET NO. CCC 07352-84

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	Civil Action
Plaintiff,	:	
-vs-	:	STIPULATION
BOARDWALK REGENCY CORPORATION, trading as CAESAR'S ATLANTIC CITY, PETER BOYNTON, LARRY BERTSCH, G. LINCOLN EBERT, J. WILLIAM HESSEL, CLAIRE LODOVICO, KATHY CAMPELLONE, MICHAEL NEUSTADTER, LARRY WOOLF, JAMES LENZ,	:	
Respondents.	:	

This Stipulation made as of the 26th day of August, 1985 by and between the plaintiff State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereafter "the Division") and respondents Boardwalk Regency Corporation (hereafter "BRC") and Peter Boynton, Larry Bertsch, G. Lincoln Ebert, J. William Hessel, Claire Lodovico, Kathy Campellone, Michael Neustadter, Larry Woolf and James Lenz (sometimes collectively referred to herein as "the Individual Respondents").

WHEREAS the Division filed a Complaint against Respondents in this matter on August 1, 1984 ("Complaint") and an Amended Complaint in October, 1984 ("Amended Complaint"); and

WHEREAS the parties hereto have discussed the matters referred to in the Complaint and Amended Complaint and are desirous of resolving this action;

NOW THEREFORE, in consideration of the premises, and the mutual agreements herein set forth, the parties agree and stipulate as follows:

1. Scope and Purpose of Stipulation. (a) The Stipulations and agreements contained herein are entered into for purposes of this action only and for purposes of settlement; (b) each part of this Stipulation is made in consideration of the execution of the entire Stipulation by the parties hereto; and (c) the Stipulation is entered into as a full and final settlement of all matters encompassed by the Complaint and Amended Complaint;

2. Each Part Contingent on Commission Approval. Each part of this Stipulation is contingent upon the approval of this Stipulation in its entirety by the Casino Control Commission ("Commission") and is also contingent upon the entry of the entire Stipulation as the final judgment. Should any part of this Stipulation not be approved by the Commission or not be included in a final judgment in this action, or for any other reason invalidated, voided, overruled or overturned, then the entire Stipulation shall be null and void.

3. Section Headings. The section headings contained in this Stipulation are for reference purposes only and shall not in any way affect the meaning or construction of this Stipulation.

THE RESPONDENTS

4. BRC (doing business as "Caesar's Atlantic City") is the holder of a casino license authorizing it to operate a casino hotel.

5. Peter Boynton holds New Jersey casino key employee license No. 151-11. At the time of the matters referred to in the Complaint and Amended Complaint, Mr. Boynton was the President and Chief Operating Officer of BRC.

6. Larry Bertsch holds New Jersey casino key employee license No. 2144-11. At the time of the matters referred to in the Complaint and Amended Complaint, Mr. Bertsch was Vice President, Treasurer and Chief Financial Officer of BRC.

7. J. William Hessel holds New Jersey casino key employee license No. 982-11. At the time of the matters referred to in the Complaint and the Amended Complaint, Mr. Hessel was the Casino Controller of BRC.

8. G. Lincoln Ebert is the holder of casino key employee license No. 171-11. At the time of the matters referred to in the Complaint and the Amended Complaint, Mr. Ebert was the Director of Casino Cage Operations at BRC.

9. Claire Lodovico is the holder of casino key employee license No. 121-11. At the time of the matters referred to in the Complaint and the Amended Complaint, Ms. Lodovico was employed as Assistant Casino Cage Shift Manager of BRC.

10. Katherine Campellone is the holder of casino key employee license No. 402-11. At the time of the matters referred to in the Complaint and the Amended Complaint, Ms. Campellone was employed as a Credit Executive of BRC.

11. James Lenz formerly held casino key employee license No. 219-11. He is presently employed as Credit Executive, Caesars Palace, Las Vegas, Nevada. Mr. Lenz' casino key employee license is inactive because he did not submit a 1985 renewal application. At the time of the matters referred to in the Complaint and the Amended Complaint, Mr. Lenz was employed as Casino Manager at BRC.

12. Larry Woolf held casino key employee license No. 200-11. At the time of the matters referred to in the Complaint and the Amended Complaint, Mr. Woolf was Vice President/Casino Operations at BRC. Mr. Woolf is presently President and Chief Operating Officer of Caesars Tahoe Resort, Stateline, Nevada. Mr. Woolf's casino key employee license is inactive because he did not submit a 1985 renewal application.

13. Michael Neustadter holds casino key employee license No. 173-11. At the time of the matters referred to in

the Complaint and Amended Complaint, Mr. Neustadter was Directo of Casino Credit at BRC.

TRANSACTIONS AT BRC INVOLVING BRIAN MOLONY

14. On or about August 16, 1980, Brian Molony patronized Boardwalk Regency Corporation ("BRC") casino-hotel in Atlantic City, apparently for the first time. He came to BRC with a group of patrons from Toronto, Canada, who were accompanied by Caesars Palace junket representatives Sid Green and Michael Rosen.

15. Mr. Molony patronized BRC again on February 7, 1981. At that time, he placed three cash deposits totalling $8,700.00 on deposit at the Cage at BRC. A representative of BR prepared three Customer Deposit Receipts reflecting Mr. Molony's deposits of these funds. Representatives of BRC also prepared a Patron Reference Card recording the deposits and withdrawals. Attached hereto and incorporated herein and marked as Exhibit 1 is a true copy of the Patron Reference Card prepared for Brian Molony on February 7, 1981.

16. Mr. Molony next placed cash deposits at BRC on June 27, 1981, when he deposited $40,000 in cash at the BRC Cage. Cage personnel prepared a new Patron Reference Card which was utilized to record Mr. Molony's safekeeping deposit. Attached hereto and incorporated herein and marked as Exhibit 2 is a true copy of the Patron Reference Card prepared for Brian Molony June 27, 1981.

17. Between June 27, 1981 and March 30, 1982, Mr. Molony patronized BRC on a number of occasions. During this period, he made over 25 separate deposits of funds at the Cage at BRC. Each deposit during this period was made in the form of cash or chips, and each was recorded by BRC personnel on Mr. Molony's Patron Reference Card and a Customer Deposit Receipt was completed for each deposit.

The California Clearing Corporation Account; Inter-Corporate Transfers

18. Desert Palace, Inc. ("DPI") is a Nevada corporation, incorporated in 1964, which owns and operates Caesars Palace, a Las Vegas hotel-casino. DPI is a wholly-owned subsidiary of Caesars World, Inc. ("CWI").

19. Boardwalk Regency Corporation ("BRC") is a corporation organized and existing under the laws of the State of New Jersey and a wholly-owned subsidiary of Caesar's New Jersey, Inc. ("CNJ"). CNJ is a publicly-traded company, 86.6% of which is owned by Caesars World, Inc.

20. California Clearing Corporation is a California corporation, incorporated in 1966, with its principal business office located in Las Vegas, Nevada. California Clearing Corporation is a wholly-owned subsidiary of DPI whose purpose it is to accept funds for deposit in Caesars Palace's Cage and to accept funds to satisfy outstanding obligations of Caesars Palace's gaming patrons.

21. DPI and California Clearing Corporation each maintain a U.S. currency bank account at the Manulife Branch of the Bank of Montreal located at 55 Bloor Street West, Toronto. DPI's account is numbered FX276, and California Clearing Corporation's account is numbered FX274. Both accounts were established in 1976 as "deposit only" accounts which, for the most part, are used as an accommodation to Toronto area residents who wish to place funds on deposit or to satisfy outstanding obligations.

22. At a meeting of the Board of Directors of California Clearing Corporation held on April 14, 1975 it was resolved that Desert Palace, Inc. would be authorized to accept in all of its bank accounts checks, drafts, and money orders made payable to California Clearing Corporation. Accordingly, when accounts numbered FX276 and FX274 were established at the Bank of Montreal in 1976 it was understood by the corporations and the bank that amounts to be deposited into the account designated FX274 in the name of California Clearing Corporation could be deposited, instead, directly into DPI's account designated FX276.

23. The Toronto bank accounts of DPI and California Clearing Corporation were deposit-only accounts. Sid Green and Michael Rosen would, on occasion, arrange for the deposit of funds on behalf of Caesar's Palace customers into these accounts. These individuals among other things, participated in junket activity for Caesars Palace pursuant to licenses granted by the State of Nevada. Presently, Sid Green and Michael Rosen are al-

licensed junket representatives in New Jersey who operate a junket enterprise known as Nevada Vacations, Inc. Nevada Vacations, Inc. holds junket enterprise license #1079-70 issued by the Casino Control Commission on January 25, 1983.

24. The concept of transferring funds between Caesars Palace and BRC had been considered by representatives of BRC in early 1981 without any reference to Mr. Molony. These representatives believed that because BRC and DPI are both subsidiaries of Caesars World, Inc. ("CWI"), a corporate qualifier on BRC's license, funds in the possession of either corporation could be treated as funds within the authority and control of the other corporation if a transfer between the two corporations was required.

25. On or about July 1, 1981, BRC prepared and maintained in its casino cage a Patron Reference Card in the name of Caesars Palace. Inter-corporate transfers of funds between Caesars Palace and BRC were recorded on this card. From July 1, 1981 to December 31, 1981, there were seven transfers of funds from Caesars Palace to BRC. These transfers ranged in amount from $4,000 to $190,000 and each transfer was recorded on the Caesars Palace Patron Reference Card which was maintained in BRC'S Casino Cage. Attached hereto and incorporated herein and marked as Exhibit 3 is a true copy of the Patron Reference Card in the name of Caesars Palace.

26. A transfer of funds from DPI to BRC through Account FX276 occurred, for example, in July of 1981 when $4,000 was transferred to BRC for the benefit of a patron of BRC. A Transmittal of Office Deposits Form No. 332 was prepared by Michael Rosen and BRC's Director of Cage Operations Linc Ebert was notified of the deposit. Records of this inter-corporate transfer were maintained in the BRC casino cage on the Caesars Palace Patron Reference card. Attached hereto and incorporated herein and marked as Exhibit 4 is a true copy of the Transmittal of Office Deposits No. 332 regarding a patron's deposit dated July 2, 1981.

27. In August 1981, BRC personnel completed Customer Deposit Receipt No. 18912 containing instructions to transfer $120,000 from BRC to Caesars Palace for the account of Mr. Molony. This transfer was effectuated by BRC drawing check 39194 dated 9/8/81 and payable to Caesars Palace in the amount of $120,000 and forwarding said check to Caesars Palace, Las Vegas. Attached hereto and incorporated herein and marked as Exhibits 5 and 6 are true copies of Customer Deposit Receipt No. 18912 and BRC check 39194, respectively.

28. On or about March 20, 1982, Mr. Molony approached James Lenz, casino manager at BRC, and asked Mr. Lenz whether a means could be used to transfer funds from Toronto to BRC. Mr. Lenz told Mr. Molony that Caesars Palace had a branch office in Toronto, and that Mr. Lenz would make inquiries and get back to him.

29. Shortly thereafter, James Lenz discussed Mr. Molony's request with his superior, and J. William Hessel, casino controller at BRC, and G. Linc Ebert, Director of cage operations at BRC. These representatives took the position that funds deposited by Mr. Molony in DPI account FX276, or placed on deposit at the Cage at Caesars Palace for the benefit of patrons at BRC, were to be treated as cash on deposit at BRC.

30. In late March, 1982, Mr. Lenz told Mr. Molony that there was a procedure for transferring funds to BRC through the DPI Toronto account. Mr. Molony was instructed to contact either Michael Rosen or Sid Green to work out the details of any deposit.

31. BRC representatives contacted Mr. Rosen to inform him of the possibility of a deposit by Mr. Molony. They requested that the BRC Cage be informed if such a deposit were made.

The Transaction of April 1, 1982

32. On the morning of April 1, 1982, Mr. Molony contacted Michael Neustadter, Assistant Director of Credit and Marketing at BRC, to inform BRC of Mr. Molony's intent to deposit funds into account FX276.

33. Mr. Neustadter then called Mr. Rosen and informed him of Mr. Molony's anticipated deposit. Mr. Neustadter asked Mr. Rosen to notify BRC immediately upon the receipt of Mr. Molony's deposit.

34. In a subsequent telephone call to Mr. Rosen, Mr Molony indicated that he intended to deposit $400,000 into account FX276. Mr. Molony asked that $360,000 of this amount be transferred to BRC and that the remaining $40,000 be transferred to Caesars Palace in Las Vegas in the name of Alphonse Ruggiero.

35. At approximately 11:00 a.m., a person identifying himself as an assistant manager of the Canadian Imperial Bank of Commerce ("CIBC") telephoned Timothy Rochford, Account Manager at the Thompson Building Branch of the Bank of Montreal, and indicated that a large deposit in the form of a check would be made at the Thompson Building Branch. The caller asked Mr. Rochford about the procedure for transferring the funds to the Manulife Branch for credit that same day.

36. Between 12:00 noon and 2:00 p.m. on April 1, 1982, bank check 2329732 drawn upon the account of the Canadian Imperial Bank of Commerce at the Irving Trust Company in New York City and made payable to the order of California Clearing Corporation in the amount of $400,000 was delivered to the Thompson Building Branch of the Bank of Montreal in Toronto.

37. Check 2329732 was accompanied by a note which read: "For transfer to the Bank of Montreal, Bay and Bloor, Attention: Mrs. Lock." On the upper left hand corner of the draft appeared the name of "A. Ruggiero." Attached hereto and incorporated herein and marked as Exhibit 7 is a true copy of the front and back of CIBC check 2329732.

38. Check 2329732 and the accompanying note were received at the Thompson Building Branch by Timothy Rochford, Account Manager for the Bank of Montreal. Mr. Rochford transferred the check to Janet Sokolowski, Foreign Exchange Clerk at the Thompson Building Branch. Check 2329732 was not viewed by BRC, DPI or any of their representatives prior to the institution of litigation against DPI.

39. Ms. Sokolowski telephoned Ms. Pat Locke of the Manulife Branch of the Bank of Montreal in order to transfer the deposited funds. Account FX276 was credited in the amount of $400,000. The Thompson Branch then issued a settlement form which recorded the transfer to the Manulife Branch and the credit to Account FX276.

40. The Manulife Branch of the Bank of Montreal subsequently issued DPI's Toronto Branch Office a "credit advice" dated April 1, 1982, indicating a credit in the amount of $400,000 to Account FX276. Attached hereto and incorporated herein and marked as Exhibit 8 is a true copy of said credit advice.

41. On the afternoon of April 1, 1982, Mr. Rosen telephoned the Manulife Branch of the Bank of Montreal and was informed that the $400,000 deposited into Account FX276 were "cleared funds."

42. Mr. Ebert telephoned the Cage Manager at Caesars Palace to advise him of the anticipated deposit by Mr. Molony and to request that a transmittal of office deposits form confirming the deposit be telecopied to the Cage at BRC.

43. After receiving confirmation that the funds deposited to the credit of Account FX276 were "cleared funds", Mr. Rosen prepared Transmittal of Office Deposits No. 389 indicating that $360,000 had been deposited by Brian Molony to Account FX276 "for Caesars Boardwalk Regency Hotel." The Transmittal was signed by S. Green. Mr. Rosen also prepared Transmittal of Office Deposits No. 390 indicating a deposit to Account FX276 by "Ruggiero, A." in the amount of $40,000.

44. Mr. Rosen telecopied Transmittal forms 389 and 390 to the Cage at Caesars Palace. Attached hereto and incorporated herein and marked as Exhibits 9 and 10, respectively, are Transmittal form 389 regarding Mr. Molony and Transmittal form 390 regarding Mr. Ruggiero.

45. Mr. Green or Mr. Rosen telephoned Mr. Neustadter to confirm the deposit by Mr. Molony of funds into account FX276 and to inform BRC that these funds were "cleared funds."

46. Upon receiving Transmittal of Office Deposits Nos. 389 and 390, the Cage at Caesars Palace telecopied the copy of form 389 to the Cage at BRC. BRC employees understood that Caesars Palace was committed to forward the amount stated on the transmittal form to BRC.

47. Personnel at Caesars Palace's Cage prepared Customer Deposit Receipt No. 90980 indicating a deposit by Brian Molony, dated April 1, 1982, in the amount of $360,000. At the bottom of this deposit receipt was a notation indicating that the funds had been refunded by I.O.U.'s "sent to Boardwalk." Attached hereto and incorporated herein and marked as Exhibit 11 is a true copy of Caesars Palace Customer Deposit Receipt No. 90980.

48. Upon receiving the transmitted copy of Transmittal of Office Deposits No. 389, Mr. Ebert prepared BRC Customer Deposit Receipt No. 23064 indicating a deposit of $360,000 in the name of Brian Molony. Customer Deposit Receipt No. 23064 was dated April 1, 1982 and time-stamped 4:20 p.m. on April 1, 1982. At the time of preparation of Customer Deposit Receipt No. 23064, the box for "Customer's signature" was left blank, as was customary at BRC (see paragraph 54, infra), because Mr. Molony had not yet arrived at BRC. Attached hereto and incorporated herein and marked as Exhibit 12 is a true copy of the front and back of Customer Deposit Receipt No. 23064.

49. On April 2, 1982, DPI drew check No. 1300 on its account FX276 at the Manulife Branch of the Bank of Montreal. This check was made payable to DPI in the amount of $400,000. At that time, DPI maintained a checking account at the First Interstate Bank in Las Vegas, Nevada. On April 2, 1982 check No. 1300 was deposited in DPI's account at the First Interstate Bank, and a credit in the amount of $400,000 was entered in DPI's account.

Attached hereto and incorporated herein and marked as Exhibit 1 is a true copy of DPI check No. 1300.

50. On April 2, 1982, Caesars Palace prepared check 129307 in the amount of $360,000 for "Brian Maloney". On April 2, 1982 Caesars Palace check 129307, drawn on the Chemical Bank of New York City and payable to Boardwalk Regency was issued and sent to BRC by Federal Express. Attached hereto and incorporated herein and marked as Exhibit 14 is a true copy of Caesars Palace check 129307 and the accounting invoice pertaining to said check.

51. On the evening of Friday, April 2, 1982, Brian Molony took an American Airlines flight from Toronto to LaGuardia airport in New York. BRC had arranged for Mainland Aviation, Inc. to transport Brian Molony via air taxi from LaGuardia airport to Bader Field, Atlantic City. Upon arrival at Bader Field at approximately 9:30 p.m. on April 2, 1982, BRC arranged for a limousine to transport Brian Molony to Caesars Hotel and Casino.

52. On April 2, 1982 and April 3, 1982 Brian Molony negotiated a total of seventeen (17) safekeeping withdrawals totalling $570,000, and made five (5) chip deposits at the cage totalling $260,000. These transactions resulted in a remaining balance of $50,000 in his safekeeping deposit account.

53. Shortly after 1:00 a.m. on April 4, 1982 (gaming date April 3, 1982), Brian Molony went to BRC's casino Cage to settle his account. At this time, Mr. Molony requested that his

remaining balance of $50,000 be sent to Caesars Palace, Las Vegas to the credit of Alphonse Ruggiero. A BRC Cage representative prepared Customer Deposit Receipt No. 23070 in the amount of $50,000 to reflect Mr. Molony's remaining balance and had Mr. Molony sign the receipt in the boxes marked "customers signature" and "refunded: customers signature". Mr. Molony was also asked to sign a release stamp which was placed on the reverse side of Customer Deposit Receipt No. 23070. Attached hereto and incorporated herein and marked as Exhibits 15 and 16 are true copies of Customer Deposit Receipt No. 23070 and the release stamp, respectively. The requested transfer of the $50,000 was effectuated by BRC forwarding check 612071 in the amount of $50,000 payable to Caesar's Palace on or about April 19, 1982. Said check was received by Caesars Palace, Las Vegas where it was time-stamped and restrictively endorsed at 1:00 a.m., April 26, 1982. Attached hereto and incorporated herein and marked as Exhibit 17 is a true copy of the front and back of BRC check 612071.

54. When funds are wired to BRC for safekeeping deposit purposes, BRC personnel customarily make out a cash deposit receipt and attach, if available, a photocopy of the customer's signature to the duplicate copy of the receipt for comparison when the customer attempts to withdraw the deposited funds. BRC personnel followed this procedure for Transmittal of Office Deposits No. 389. BRC's casino Cage department affixed to the duplicate copy of Customer Deposit Receipt No. 23064 a cut-out photocopy of Brian Molony's signature and placed it in the box

marked "Customer's Signature". Brian Molony did not place his original signature on the duplicate copies of Customer Deposit Receipt No. 23064 in the box marked "Customer's Signature". Attached hereto and incorporated herein and marked as Exhibit 18 is a true copy of Customer Deposit Receipt No. 23064 with the facsimile signature affixed thereto.

55. On Sunday, April 4, 1982, at approximately 6:00 a.m., BRC arranged to have a limousine transport Brian Molony from BRC to LaGuardia airport in New York for his return flight to Toronto.

56. Caesars Palace check 129307 arrived at BRC in Atlantic City on Monday, April 5, 1982. Said check was time-stamped and restrictively endorsed by BRC Cage personnel at 1:1 p.m., April 5, 1982. On the front of the check Director of Cage Operations, Linc Ebert, wrote the notation "OK to Dep" along with his initials and license number, indicating his authorization to deposit the check. Upon receipt of Caesars Palace's check 129307 in the amount of $360,000, BRC's casino Cage department posted the receipt to the Caesars Palace Patron Reference Card. Check 129307 was deposited by BRC in its depository bank on April 6, 1982. Attached hereto and incorporated herein and marked as Exhibit 19 is a true copy of the front and back of Caesars Palace's check 129307 as it appeared after its receipt by BRC.

57. The $400,000 transfer from Desert Palace's Toronto account FX276 to Desert Palace's Las Vegas account at the Fir

Interstate Bank was effectuated on April 7, 1982 as indicated by a Requisition for Transfer document from the Bank of Montreal to Caesars Palace's Toronto office notifying them of the $400,000 charge to account FX276. Attached hereto and incorporated herein and marked as Exhibit 20 is a true copy of said Requisition for Transfer form.

58. Mr. Molony telephoned Michael Neustadter and told Mr. Neustadter that he wanted to spend the next weekend, April 10, 1982, at Caesars Palace in Las Vegas. Mr. Neustadter had earlier given Mr. Molony his business card and had told Mr. Molony to write the name of Murray Gennis on the back.

59. Mr. Neustadter stated that he would arrange Mr. Molony's trip to Las Vegas and that Mr. Molony should contact Mr. Gennis when he arrived at Caesars Palace.

60. On April 7, 1982 Mr. Molony arranged for the deposit of CIBC bank check 2329741 into Account FX276. Check 2329741 was drawn upon CIBC's account at the Irving Trust Company and was payable to California Clearing Corporation in the amount of $800,000. On the upper left hand corner of the check appeared the name of "A. Ruggerio." Attached hereto and incorporated herein and marked as Exhibit 21 is a true copy of CIBC check 2329741. Neither BRC nor DPI nor any of their representatives saw check 2329741 prior to the commencement of litigation against DPI.

61. Mr. Molony contacted Michael Rosen to inform him the deposit at the Thompson branch. Mr. Rosen spoke to Pat Locke of the Manulife Branch and was informed that the funds deposited by Mr. Molony were "cleared funds."

62. The Manulife Branch of the Bank of Montreal subsequently issued DPI's Toronto Branch Office a "credit advice" dated April 7, 1982, indicating a credit in the amount of $800,000 to Account FX276. Attached hereto and incorporated herein and marked as Exhibit 22 is a true copy of said credit advice.

63. In a telephone conversation with cage personnel at Caesars Palace, Mr. Rosen informed them that the funds deposited by Mr. Molony were "cleared funds."

64. Mr. Green executed Transmittal of Office Deposits No. 393 on which was indicated a deposit of $800,000 to Account FX276. The transmittal contained the following notation:

> Received under the name of Mr. A. Ruggerio as per Mr. Molony's instructions. Money is to be under his name for his use.

Attached hereto and incorporated herein and marked as Exhibit 23 is a true copy of Transmittal of Office Deposits No. 393.

65. Mr. Rosen telecopied Transmittal of Office Deposits No. 393 to the Cage at Caesars Palace. After the deposit was confirmed, cage personnel at Caesars Palace issued DPI check 1302

drawn upon Account FX276 and payable to the order of DPI in the amount of $800,000. Check 1302 contained a notation which indicated:

"Trans to F.I. Nev."

Attached hereto and incorporated herein and marked as Exhibit 24 is a true copy of DPI check 1302.

66. Mr. Molony arrived at Caesars Palace on April 8. He stayed there through April 11.

67. On April 8, 1982 a cash deposit of $800,000 was entered on Mr. Molony's Patron Reference Card at Caesars Palace. Attached hereto and incorporated herein and marked as Exhibit 25 is a true copy of Mr. Molony's Patron Reference Card at Caesars Palace.

68. On April 9, 1982, DPI issued check 4961 in the amount of $200,000 and payable to the order of the Barbary Coast, a Las Vegas casino. At the bottom of check 4961, appeared a note indicating that the funds were being transferred for the benefit of Brian Molony. Attached hereto and incorporated herein and marked as Exhibit 26 is a true copy of DPI check 4961.

69. During the period from April 8 through April 11, 1982, Mr. Molony used the $800,000 which had been deposited into Account FX276 for gaming purposes, both at Caesars Palace and the Barbary Coast Hotel and Casino. When Mr. Molony completed his

gambling at Caesars Palace, his remaining safekeeping balance at Caesars Palace was $420,200. Mr. Molony requested that Caesars Palace forward his remaining balance to Caesars Boardwalk Regency in Atlantic City.

The Transaction of April 14, 1982

70. On April 12, 1982, a Request for Check form of Caesars Palace was completed requesting the issuance of a check payable to Boardwalk Regency in the amount of $420,200 for the account of Brian Molony. Also on April 12, 1982, Caesars Palace check 129354, drawn on the Chemical Bank of New York City and payable to the order of Boardwalk Regency in the amount of $420,200, was issued by Caesar's Palace. Attached hereto and incorporated herein and marked as Exhibits 27 and 28, respectively are true copies of the Caesars Palace Request for Check form and Caesars Palace check 129354, along with the accounting invoice pertaining to said check.

71. The statement attached to check 129354 contained the following description:

For the account of Brian Maloney C/D #91326.

72. Check No. 129354 represented the balance of funds remaining on deposit at Caesars Palace from Mr. Molony's April 7 transmittal of $800,000.

73. On April 12, 1982, the Barbary Coast issued check 20670 drawn on its account at the Valley Bank of Nevada. This check was made payable to the order of "Brian Maloney or Caesar's Palace" in the amount of $538,126. Mr. Molony had apparently won some money at the Sports Book at the Barbary Coast. Attached hereto and incorporated herein and marked as Exhibit 29 is a true copy of check 20670.

74. Caesars Palace personnel arranged for the exchange of Barbary Coast Check No. 20670 for a cashier's check numbered 192296 issued by the Valley Bank of Nevada and payable to the order of Caesars Palace in the amount of $538,126. At Mr. Molony's request, Caesars Palace transmitted check 129354 and Valley Bank check 192296 to BRC. Both checks were forwarded to BRC via Federal Express. Attached hereto and incorporated herein and marked as Exhibit 30 is a true copy of cashier's check numbered 192296 issued by the Valley Bank of Nevada.

75. Caesars Palace check 129354 and Valley Bank of Nevada cashier's check numbered 192296 arrived at BRC on April 14, 1982. Said checks were time-stamped and restrictively endorsed by BRC cage personnel at 1:43 p.m., April 14, 1982. On the face of the checks Director of Cage Operations, Linc Ebert, wrote the notation "OK to Dep" along with his initials and license number, indicating his authorization to deposit the checks. Attached hereto and incorporated herein and marked as Exhibits 31 and Exhibit 32 are true copies of Caesars Palace check 129354 and

Valley Bank of Nevada cashier's check numbered 192296 as they appeared after their receipt by BRC.

76. BRC's Casino Cage Department prepared Customer Deposit Receipt No. 24382 dated April 14, 1982 in the amount of $958,326 in the name of Brian Molony. Said Customer Deposit Receipt was timestamped 1:42 p.m. on April 14, 1982. The box for "customers signature" was left blank and a copy of his signature was placed on the receipt. Attached hereto and incorporated herein and marked as Exhibit 33 is a true copy of Customer Deposit Receipt No. 24382 with the signature facsimile attached thereto.

77. On April 14, 1982 Brian Molony took a flight from Toronto to LaGuardia Airport in New York. BRC arranged through Mainland Aviation, Inc. for an air taxi flight to transport Molony from LaGuardia Airport to Bader Field in Atlantic City. Upon arrival at Bader Field at approximately 7:20 p.m. on April 14, 1982, BRC arranged for a limousine to transport Molony to Caesars Hotel and Casino.

78. On April 14, 1982 Brian Molony gambled at BRC. During the course of April 14, 1982 Brian Molony made chip deposits of $650,000 and $573,000. Mr. Molony negotiated twenty (20) safekeeping withdrawals totaling $1,160,000 and he bought back five (5) safekeeping withdrawals by presenting $250,000 in gaming chips to the Cashier's Cage. At the close of gaming date April 14, 1982, Brian Molony's balance in his safekeeping deposit account was $1,271,326

79. At approximately 4:00 a.m. on April 15, 1982 BRC arranged for a limousine to transport Brian Molony to a Pomona airfield where Molony took a charter flight from Atlantic City to Toronto as arranged by BRC with Business Jet Airlines.

80. At some time on April 14, 1982, BRC's casino cage department affixed to the duplicate copy of Customer Deposit Receipt No. 24382 a cut-out photocopy of Brian Molony's signature and placed it in the box marked "Customer's Signature." Attached hereto and incorporated herein and marked as Exhibit 34 is a true copy of Customer Deposit Receipt No. 24382 with the signature facsimile attached thereto.

81. On gaming date April 16, 1982, Brian Molony returned to BRC to engage in further gaming activity. On said date Mr. Molony negotiated thirty (30) safekeeping withdrawals totalling $1,821,326 and made one (1) chip deposit totalling $550,000. At the close of gaming day April 16, 1982, Brian Molony's safekeeping deposit account had been reduced to zero.

82. The $800,000 transfer from Desert Palace's Toronto account FX276 to Desert Palace's Las Vegas account at the First Interstate Bank was effectuated on April 14, 1982 as indicated by the Requisition for Transfer form sent from the Bank of Montreal to Caesars Palace's Toronto office notifying them of the $800,000 charge to account FX276. Attached hereto and incorporated herein and marked as Exhibit 35 is a true copy of said Requisition for Transfer form.

The Transaction of April 19, 1982

83. On the morning of April 19, 1982 Brian Molony telephoned Michael Neustadter to inform him of his intent to transfer $920,000 to BRC through Account FX276. In this conversation, Mr. Molony also asked Mr. Neustadter to make arrangements for his trip from Toronto to Atlantic City later that evening. Michael Neustadter also advised BRC's casino cage of this information.

84. Mr. Ebert spoke with Michael Rosen by telephone to inform him of the anticipated deposit by Mr. Molony.

85. Mr. Ebert called Caesars Palace to inform the cage of Mr. Molony's anticipated deposit and to request that Caesars Palace confirm the deposit by telecopying a Transmittal of Offic Deposits form to BRC.

86. Mr. Molony arranged for the deposit of CIBC check 2329846 to Account FX276 by CIBC messenger. This check, which was dated April 19, 1982, was made payable to California Clearing Corp. in the amount of $920,000. "A. Ruggiero" was typed at the top of the check. Attached hereto and incorporated herein and marked as Exhibit 36 is a true copy of CIBC check 2329846. Neither BRC nor DPI nor any of their representatives saw check 2329846 prior to the commencement of litigation against DPI.

87. Janet Sokolowski of the Thompson Branch of the Bank of Montreal completed a telephone transfer of the deposited funds to the Manulife Branch of the Bank of Montreal. Account FX

was credited in the amount of $920,000. The Thompson Branch then issued a settlement form which recorded the transfer to the Manulife Branch and the credit to Account FX276.

88. The Manulife Branch of the Bank of Montreal issued a credit advice dated April 19, 1982, indicating that Account FX276 had been credited in the amount of $920,000. Attached hereto and incorporated herein and marked as Exhibit 37 is a true copy of said credit advice.

89. Michael Rosen telephoned the Manulife Branch and received confirmation that the funds deposited by Mr. Molony were "cleared funds".

90. Mr. Rosen prepared Transmittal of Office Deposits form No. 396. This form indicated a deposit in the name of "Ruggiero, A." by "bank wire" in the amount of $920,000. A note at the bottom of this form read:

> For Caesars Boardwalk Regency - please notify Linc Ebert immediately.

Attached hereto and incorporated herein and marked as Exhibit 38 is a true copy of Transmittal of Office Deposits form No. 396.

91. Mr. Rosen telecopied Transmittal Form 396 to the Cage at Caesars Palace.

92. Caesars Palace personnel telecopied Transmittal Form 396 to BRC's Cage. Upon receiving Transmittal Form 396, Mr.

Ebert telephoned the Cage at Caesars Palace and confirmed that the correct documentation had been received. BRC employees understood that Caesars Palace was committed to forward the amount stated on the transmittal form to BRC.

93. Transmittal form 396 indicated that the funds transferred from Caesars Palace to BRC were for the benefit of Alphonse Ruggiero. For this reason, Mr. Ebert brought the form to the attention of William Hessel, BRC's Casino Controller. Messrs. Hessel and Ebert conferred and concluded that Mr. Molony could not be permitted to engage in gaming activities with funds deposited and transferred in Ruggiero's name.

94. Larry Bertsch, BRC's Treasurer, was informed of the situation. Mr. Bertsch affirmed Mr. Hessel's position that Mr. Molony could not be permitted to gamble with funds received in the name of Mr. Ruggiero.

95. Michael Neustadter, who was informed of the situation, went to the office of Peter Boynton, BRC's President. Milton Neustadter and Sonny Goldberg came into the office, and then William Hessel and Larry Woolf also came in. Michael Neustadter advised Mr. Boynton of the problem created by Transmittal 396 and Mr. Molony's anticipated arrival later that evening. Following a discussion it was agreed that Mr. Molony could not be permitted to gamble with the funds as deposited. An attempt to reach Mr. Molony at the Toronto Airport failed. Those present concluded that Mr. Ruggiero could release the funds to

Mr. Molony; however, the individuals were uncertain about whether Mr. Ruggiero would accompany Mr. Molony. Because of this uncertainty, the parties reached no decision as to available options. Attached hereto and marked as Exhibit 39 is a true copy of Michael Neustadter's memorandum regarding this meeting.

96. At approximately 8:30 p.m. Mr. Molony arrived at BRC. He was not accompanied by Mr. Ruggiero. Mr. Molony was met by Messrs. Neustadter and Woolf, who escorted him to the conference room near the Credit Department Offices.

97. Messrs. Woolf and Neustadter informed Mr. Molony that he would not be permitted to gamble with funds transmitted to Caesars Palace under Ruggiero's name.

98. Messrs. Woolf, Neustadter and others discussed several alternatives, one of which was that a BRC employee could be flown to Toronto in order to obtain Mr. Ruggiero's signature on any documents needed to release the funds to Mr. Molony's use.

99. Mr. Molony indicated he could contact Mr. Ruggiero by telephone to arrange to have him meet BRC employees at the airport in Toronto in order to execute the necessary documents.

100. Mr. Molony asked Messrs. Woolf and Neustadter to show him the documents that Ruggiero would have to sign. At that time, Mr. Molony told Mssrs. Woolf and Neustadter that he would prefer that Mr. Ruggiero not know the amount of money involved in this transaction.

101. Messrs. Hessel and Neustadter had a discussion concerning who should travel to Toronto. Claire Lodovico, a Cage employee, was chosen to fly to Toronto to meet Mr. Ruggiero, and Kathy Campellone, an employee of the Credit department, accompanied her.

102. Ms. Campellone and Ms. Lodovico were driven to the airport in Atlantic City and then flown to Toronto. Upon landing, they met Mr. Ruggiero at the Avitat hanger in the airport.

103. Ms. Lodovico verified Mr. Ruggiero's identity by examining his driver's license. Ms. Lodovico recorded Mr. Ruggiero's driver's license number and date of birth on a note pad for subsequent recording on a Patron Reference Card. Attached hereto and incorporated herein and marked as Exhibit 40 is a true copy of the note.

104. Ms. Lodovico then requested that Mr. Ruggiero sign two (2) blank customer deposit receipts, No. 23597 and No. 23598, whereupon Mr. Ruggiero placed his signature in the boxes marked "Refunded: Customer Signature" on the original copies and he placed his signature in the boxes marked "Customers Signature" on the duplicate copies. Attached hereto and incorporated herein and marked as Exhibits 41 and 42 are true copies of Customer Deposit Receipts No. 23597 and No. 23598 respectively.

105. Ms. Campellone presented Mr. Ruggiero with an assignment form which stated in its entirety: "I hereby releas

all funds under the name of Alphonse Ruggiero to be paid to Brian Maloney." After Mr. Ruggiero executed the assignment, Ms. Campellone signed it as a witness. Attached hereto and incorporated herein and marked as Exhibit 43 is a true copy of the assignment form executed by Alphonse Ruggiero on April 19, 1982.

106. Ms. Campellone telephoned BRC at approximately 1:30 a.m., April 20, 1982, while at the Toronto Airport to inform casino officials that Mr. Ruggiero's signature had been obtained.

107. Ms. Campellone and Ms. Lodovico reboarded the plane and returned to Atlantic City carrying the Customer Deposit Receipts and the assignment form signed by Mr. Ruggiero.

108. Upon receiving confirmation that Mr. Ruggiero had signed the forms, BRC cage personnel prepared Customer Deposit Receipt No. 23599 indicating a deposit in the amount of $920,000 in the name of Brian Molony. The deposit was recorded on Mr. Molony's Patron Reference Card. Attached hereto and incorporated herein and marked as Exhibit 44 is a true copy of Customer Deposit Receipt No. 23599.

109. At approximately 1:30 a.m. on April 20, 1982 Mr. Molony began to gamble with the funds credited to his safekeeping deposit account. Mr. Molony drew cash deposit withdrawals totalling $560,000 on April 19, 1982, between 1:30 a.m. and 4:00 a.m. When the casino closed at 4:00 a.m. on April 20, 1982 (gaming date April 19, 1982), Mr. Molony deposited $750,000 in gaming

chips at the Cage. The available balance on Mr. Molony's safe-keeping deposit account at the close of gaming date April 19, 1982 was $1,110,000. After the casino closed, Mr. Molony was transported by limousine to Bader Field where he boarded a private jet for the return trip to Toronto.

110. When Claire Lodovico returned to BRC's casino cage on the early morning of April 20, 1982, she turned in Customer Deposit Receipt No. 23597 which was time-stamped at 6:27 a.m., April 20, 1982. The other Customer Deposit Receipt, No. 23598, which was signed by Ruggiero was never used. BRC Casino Cage representatives prepared a Patron Reference Card for A. Ruggiero. They recorded on the card Mr. Ruggiero's date of birth, driver's license number and information regarding the $920,000 deposit on April 19, 1982 by transmittal from Caesars Palace. Attached hereto and incorporated herein and marked as Exhibit 45 is a true copy of A. Ruggiero's Patron Reference Card.

111. On April 21, 1982 Claire Lodovico and Katherine Campellone together prepared a memorandum pertaining to their trip to Toronto on April 19, 1982. Attached hereto and incorporated herein and marked as Exhibits 46 and 47 are Claire Lodovico's and Katherine Campellone's memoranda of April 21, 1982, respectively.

112. On April 19, 1982 Caesars Palace, Las Vegas prepared check 129401 in the amount of $920,000 payable to Boardwalk Regency and dated April 19, 1982 for the purpose described

"For Toronto transmittal #396 for A. Ruggiero." Check 129401 was drawn upon Caesars Palace's account at the Chemical Bank in New York City. Attached hereto and incorporated herein and marked as Exhibit 48 is a true copy of Caesars Palace check 129401, along with the accounting invoice pertaining to said check.

113. Caesars Palace check 129401 was delivered via Federal Express to the attention of Linc Ebert, Director of Cage Operations. Said check was received and time-stamped by BRC's Casino Cage Department at 2:22 p.m. on April 20, 1982. On the face of the check Linc Ebert wrote "ok to dep" and placed his initials and license number, authorizing the main bank to deposit the check. Attached hereto and incorporated herein and marked as Exhibit 49 is a true copy of the front and back of Caesars Palace check 129401 as it appeared after its receipt by BRC.

114. On April 20, 1982 Desert Palace, Inc. prepared check 1304 in the amount of $920,000 payable to itself and drawn on its account FX276 at the Bank of Montreal in Toronto, for the purpose of transferring to itself the $920,000 that Mr. Molony had previously deposited in that account. Attached hereto and incorporated herein and marked as Exhibit 50 is a true copy of Desert Palace, Inc. check 1304.

115. On April 21, 1982 Brian Molony returned to BRC to engage in gaming activity. Mr. Molony negotiated fifteen (15) safekeeping withdrawal checks totalling $750,000 on gaming date April 21, 1982. At the close of gaming date April 21, 1982, Mr.

Molony deposited $275,000 in gaming chips at the cashiers cage, leaving a remaining balance in his safekeeping deposit account of $635,000.

116. On April 23, 1982 Brian Molony returned to BRC to engage in gaming activity. Mr. Molony executed seven (7) safekeeping withdrawal checks totalling $635,000 on April 23, 1982. At the close of gaming date April 23, Mr. Molony's safekeeping deposit account had a balance of zero.

117. The $920,000 transfer from Desert Palace's Toronto Account FX276 to Desert Palace's Las Vegas account at the First Interstate Bank was effectuated on April 23, 1982 as indicated by the Account Debit form processed by the Bank of Montreal which notified the office of Sid Green and Mike Rosen of the $920,000 charge to account FX276. Attached hereto and incorporated herein and marked as Exhibit 51 is a true copy of said Account Debit form.

The Transaction of April 26, 1982

118. On the morning of April 26, 1982, Mr. Molony telephoned Michael Neustadter to inform him of his intent to deposit funds into Account FX276. Mr. Molony asked Michael Neustadter if arrangements would be made for BRC personnel to travel to Toronto in order to obtain Ruggiero's signature, since Molony was going to deposit these funds in Ruggiero's name once again.

119. Mr. Neustadter informed Linc Ebert of the anticipated deposit by Mr. Molony. Mr. Ebert then conveyed this information to Michael Rosen. Mr. Ebert also asked Mr. Rosen to contact the Cage at BRC to confirm the deposit.

120. At approximately 10:00 a.m., an envelope containing two bank checks totalling $1,420,000 was delivered by messenger to the Thompson Branch of the Bank of Montreal. The first check, CIBC check 2329780, was dated April 26, 1982 and was made payable to California Clearing Corporation in the amount of $900,000. The second check, CIBC check 2329781, was dated April 26, 1982 and was made payable to California Clearing Corporation in the amount of $520,000. On the upper left hand corner of both checks appeared the name "A. Ruggerio." Neither BRC nor DPI nor any of their representatives saw check 2329780 or check 2329781 prior to the commencement of litigation against DPI. Attached hereto and incorporated herein and marked as Exhibits 52 and 53 are true copies of CIBC checks 2329780 and 2329781 respectively.

121. Janet Sokolowski of the Thompson branch of the Bank of Montreal transferred the $1,420,000 in U.S. funds by telephone to the Manulife branch of the Bank of Montreal. This transfer was recorded on a requisition for transfer form prepared by Ms. Sokolowski. The transfer of the funds was confirmed in a settlement form sent by the Thompson Branch to the Manulife Branch.

122. The transfer of funds was recorded by Manulife personnel on a "telephone transfer" memorandum. In reliance upo

this memorandum, Bank of Montreal personnel credited Account FX276 in the amount of $1,420,000.

123. Ms. Pat Locke of the Manulife branch telephoned Mr. Rosen to inform him that $1,420,000 in U.S. funds had been transferred into Account FX276 by order of A. Ruggiero. In response to Mr. Rosen's inquiry, Mrs. Locke indicated that the funds had been deposited and that the funds were "cleared funds".

124. The Manulife Branch of the Bank of Montreal subsequently issued DPI's Toronto Branch Office a "credit advice" dated April 26, 1982, indicating a credit in the amount of $1,420,000 to Account FX276. Attached hereto and incorporated herein and marked as Exhibit 54 is a true copy of said credit advice.

125. Michael Rosen called Linc Ebert and notified him that $1,420,000 had been deposited into Account FX276.

126. Mr. Rosen telecopied Transmittal of Office Deposits No. 398 to the Cage at Caesars Palace. This form indicated a deposit in the name of "Ruggiero, A." by "bank wire" in the amount of $1,420,000. Attached hereto and incorporated herein and marked as Exhibit 55 is a true copy of Transmittal of Office Deposits form No. 398.

127. Transmittal No. 398 was received at the Caesars Palace Cage and a copy was telecopied to the cage at BRC. BRC employees understood that Caesars Palace was committed to forward the amount stated on the transmittal form.

128. DPI drew check 1306 on Account FX276. This check, dated April 26, 1982, was made payable to DPI in the amount of $1,420,000, and was deposited into DPI's account at the First Interstate Bank. The credit of $1,420,000 was entered into DPI's account. Attached hereto and incorporated herein and marked as Exhibit 56 is a true copy of Desert Palace, Inc. check 1306 in the amount of $1,420,000.

129. Following his conversation with Michael Neustadter described in paragraph 119, supra, Mr. Ebert contacted Claire Lodovico at home and advised her that it would be necessary for her to fly to Toronto on a private jet that evening, obtain Ruggiero's signature once again on the necessary forms, and then travel back to BRC with Brian Molony.

130. At 4 p.m. on April 26, 1982, upon the instructions of Mr. Ebert, Ms. Lodovico boarded a flight chartered by BRC from Business Jet Airlines. Ms. Lodovico flew to the airport in Toronto where she met Messrs. Ruggiero and Molony. She presented Mr. Ruggiero with Customer Deposit Receipts No. 24726 and No. 24747 and an assignment form. Mr. Ruggiero executed these documents and returned them to Ms. Lodovico. Both Customer Deposit Receipts 24726 and 24727 were blank at the time Mr. Ruggiero signed them. Attached hereto and incorporated herein and marked as Exhibits 57 and 58 are true copies of Customer Deposit Receipts No. 24726 and No. 24727. Also attached hereto and incorporated herein and marked as Exhibit 59 is a true copy of the assignment form signed by Alphonse Ruggiero on April 26, 1982.

131. Mr. Molony and Ms. Lodovico flew from Toronto to Atlantic City on the Business Jet charter flight. They arrived at BRC at some time after 8:15 p.m. Following her return to Atlantic City on April 26, 1982, Claire Lodovico prepared a memorandum pertaining to her trip to Toronto on said date. Attached hereto and incorporated herein and marked as Exhibit 60 is a true copy of Claire Lodovico's memorandum dated April 26, 1982.

132. At approximately 8:41 p.m. on April 26, 1982, BRC's casino cage department prepared Customer Deposit Receipt No. 23648, dated April 26, 1982, in the amount of $1,420,000 in the name of Brian Molony. Said Customer Deposit Receipt was time-stamped 8:41 p.m., April 26, 1982 and it was signed by Brian Molony in the box marked "Customer's Signature". Attached hereto and incorporated herein and marked as Exhibit 61 is a true copy of Customer Deposit Receipt No. 23648.

133. On April 26, 1982 Mr. Molony negotiated twenty-four (24) safekeeping withdrawal checks totalling $2,170,000. During the course of said gaming date, Molony made two (2) chip deposits, one in the amount of $500,000 and the other in the amount of $20,000. Also during the course of said gaming date Mr. Molony bought back six (6) safekeeping withdrawals by presenting gaming chips to the Cashier's Cage in the amount of $120,000 and in the amount of $500,000. At the close of gaming date April 26, 1982 the remaining balance in Molony's safekeeping deposit account was $390,000.

134. Mr. Molony returned to Toronto in the early morning hours of April 27, 1982. Shortly after his arrival, he was arrested by Toronto police on charges of embezzling funds from CIBC.

135. During the 15 months in which Mr. Molony utilized a safekeeping deposit account at BRC he was treated as a cash player. During this period, he deposited a total of $9,890,636. Of this amount, $2,494,300 was deposited in the form of cash, $3,738,000 in the form of chips, and $3,658,326 in the form of transfers from Caesars Palace. At the time of his arrest, there was $390,000 on deposit in his name in the BRC Cage.

COMPLIMENTARIES

136. During the time Mr. Molony gambled at BRC, he received various complimentary items, including food and beverages, hotel rooms and reimbursement for air and ground transportation. BRC reported these complimentary items totalling approximately $ 60,000.00 in value on the complimentary services report submitted to the Division of Gaming Enforcement and Casino Control Commission.

137. A representative of BRC also gave Mr. Molony a Rolex watch valued at approximately $8,000.00, which was not included in the complimentary services reports submitted to the Division of Gaming Enforcement and Casino Control Commission.

BRC has represented that the item was unintentionally omitted and the Division of Gaming Enforcement does not dispute this representation.

MR. MOLONY'S BACKGROUND

138. In the casino industry, it is not unusual for a gaming patron to express a desire for anonymity. Whenever it is appropriate and possible to do so, a casino will respect a patron's desire for anonymity. Relevant BRC personnel understood from Mr. Molony's actions that he desired to remain anonymous.

139. A gaming patron of BRC who occasionally gambled with Mr. Molony at the Baccarat Pit informed BRC personnel that he had asked Mr. Molony what he did for a living and was told by Mr. Molony that he had earned a good deal of money from speculation in commodities and the stock market.

140. BRC and the Individual Respondents represent that at no time prior to the arrest of Mr. Molony were any of them aware of Mr. Molony's true identity or that he was gambling with embezzled funds. The Division of Gaming Enforcement represents that it has obtained no proof to the contrary.

141. Commencing sometime in March, 1982, John Connors, a former employee of the FBI and Associate Director of Corporate Security for Caesars World, Inc. assigned to Caesars Atlantic City as Director of Surveillance, initiated inquiries regarding Mr. Molony at the request of Peter Boynton. Mr. Connors repr

sents that he did not learn about Mr. Molony's background or employment prior to his arrest.

142. Some of Mr. Molony's gaming activity at BRC was videotaped, as part of BRC's routine surveillance procedures over high limit players. These tapes were re-used because they did not indicate any unusual play activity or gaming disputes with the patron. The Division of Gaming Enforcement requested that BRC tape Mr. Molony's play on April 26. Mr. Connors authorized re-use of the tapes of April 26, in accordance with BRC's standard procedure, after Division of Gaming Enforcement personnel did not request that they be retained.

SUBSEQUENT EVENTS

143. In November, 1983, Brian Molony pled guilty to a charge of embezzlement in Toronto County Court. On or about March 23, 1984 Mr. Molony was sentenced to serve six (6) years in prison.

144. On or about February 1, 1985, Alphonse Ruggiero was acquitted of criminal possession of stolen money in Toronto County Court on the finding of the Court that it was not proven, beyond a reasonable doubt, that Mr. Ruggiero was aware of the stolen character of the funds transferred to him by Brian Molony.

STATUTORY PROVISIONS AND REGULATIONS

145. BRC's failure to report to the Casino Control Commission and the Division of Gaming Enforcement a gift to Mr. Molony of a Rolex watch violated N.J.S.A. 5:12-102 and N.J.A.C. 19:45-1.9(c) and 1.2(c)(3).

146. The method by which Mr. Molony transferred funds to BRC in April, 1982 was not submitted to nor approved by the Commission. BRC's failure to seek approval of these procedures violated N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.

147. While not constituting a violation of the credit provisions in N.J.S.A. 5:12-101, BRC's acceptance of transmittal forms as cash equivalents on April 1, 19, and 26, 1982, enabling Brian Molony to commence safekeeping deposit withdrawals, did not conform to the definition of "cash equivalents" contained in N.J.A.C. 19:45-1.1 and thereby violated the provision of N.J.S.A. 5:12-101 (b) which permits the establishment of an account by any person with a casino licensee by a deposit of cash or recognized travellers checks or other cash equivalents, and N.J.A.C. 19:45-1.24(a).

148. While not constituting a violation of the credit provisions in N.J.S.A. 5:12-101, BRC's acceptance as cash equivalents of Caesars Palace check 129354 and Valley Bank of Nevada cashiers check 192296, which was made payable to Caesars Palace and endorsed to BRC, on April 14, 1982, did not conform

the definition of "cash equivalents" contained in N.J.A.C. 19:45-1.1 and thereby violated the provision of N.J.S.A. 5:12-101(b) which permits the establishment of an account by any person with a casino licensee by a deposit of cash or recognized travelers checks or other cash equivalents, and N.J.A.C. 19:45-1.24(a).

149. The execution by Mr. Ruggiero of Cash Deposit Receipts outside of BRC's cage on April 19, 1982, and April 26, 1982, violated N.J.A.C. 19:45-1.15(b) and N.J.A.C. 19:45-1.25(e).

150. BRC's failure to complete Customer Deposit Receipt No. 23597 on April 19, 1982 and Customer Deposit Receipt No. 24726 on April 26, 1982, prior to obtaining Mr. Ruggiero's signature violated N.J.A.C. 19:45-1.24(h), (i) and (m).

151. BRC's failure to obtain the original signature of Brian Molony on Customer Deposit Receipt No. 23064, dated April 1, 1982, and Customer Deposit Receipt No. 24382, dated April 14, 1982, regarding patron Brian Molony violated N.J.A.C. 19:45-1.24(i).

152. BRC's failure to record the form in which the funds were received in preparing Customer Deposit receipt No. 23599, dated April 19, 1982 and Customer Deposit Receipt No. 23648, dated April 26, 1982, regarding patron Brian Molony violated N.J.A.C. 19:45-1.24(h)5.

UNDERTAKINGS BY RESPONDENT BRC

153. BRC recognizes the need to comply with the Casino Control Act and the regulations promulgated thereunder, and agrees to comply with the aforementioned statutory and regulatory provisions.

154. BRC agrees to close its casino for one gaming day upon terms and conditions set forth by the Casino Control Commission.

UNDERTAKINGS BY INDIVIDUAL RESPONDENTS

155. Respondents Peter Boynton, Larry Bertsch, G. Lincoln Ebert, J. William Hessel, Claire Lodovico, Kathy Campellone, Michael Neustadter, Larry Woolf and James Lenz each recognizes the need to comply with the Casino Control Act and the regulations thereunder and agrees to comply with the aforementioned statutory and regulatory provisions.

156. As of the date this agreement was executed, respondent Larry Bertsch has not given his consent to the terms of this Stipulation.

157. Respondent Michael Neustadter agrees to pay the sum of $7,500 to the Casino Control Commission as a civil penalty pursuant to N.J.S.A. 5:12-129(5) in full and final settlement of the allegations.

158. Respondent Larry Woolf agrees to pay the sum of $10,000 to the Casino Control Commission as a civil penalty pursuant to N.J.S.A. 5:12-129(5) in full and final settlement of the allegations.

159. Respondent James Lenz agrees to pay the sum of $7,500 to the Casino Control Commission as a civil penalty pursuant to N.J.S.A. 5:12-129(5) in full and final settlement of the allegations.

160. Respondent J. William Hessel agrees to pay the sum of $3,500 to the Casino Control Commission as a civil penalty pursuant to N.J.S.A. 5:12-129(5) payable in three years in equal monthly installments in full and final settlement of the allegations.

161. Respondent G. Lincoln Ebert agrees to pay the sum of $3,000 to the Casino Control Commission as a civil penalty pursuant to N.J.S.A. 5:12-129(5) payable in three years in equal monthly installments in full and final settlement of the allegations.

162. The parties agree that the Complaint and Amended Complaint against Respondents Peter Boynton, Kathy Campellone and Claire Lodovico are to be dismissed.

The parties to this Stipulation have endeavored to submit to the Casino Control Commission a detailed and comprehensive submission of the material and relevant facts pertinent to the Division's Complaint and Amended Complaint, supplemented by the Exhibits referred to herein.

This Stipulation may be executed in two or more counter parts by the parties hereto, each of which when so executed will be an orginal, but all of which together will constitute one and the same instrument.

The undersigned consent to the form and entry of this Stipulation in full and final settlement of the allegations and claims raised in the Division of Gaming Enforcement's Complaint and Amended Complaint.

Thomas O'Brien, Director
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J. William Hessel

William Cagney
Markey, Dailey & Cagney
Attorneys for Respondent
Larry Woolf

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This Stipulation may be executed in two or more counterparts by the parties hereto, each of which when so executed will be an originial, but all of which together will constitute one and the same instrument.

The undersigned consent to the form and entry of this Stipulation in full and final settlement of the allegations and claims raised in the Division of Gaming Enforcement's Complaint and Amended Complaint.

Joseph LaSala
Robinson, Wayne, Levin,
Ricio & LaSala
Attorneys for Respondent
Michael Neustadter

Thomas O'Brien, Director
Division of Gaming Enforcement

J. Michael Nolan, Jr.

J. Michael Nolan, Jr.
Pitney, Hardin, Kipp & Szuch
Attorneys for Respondent
Boardwalk Regency Corporation

Anthony R. Mautone
Attorney for Respondents
Peter Boynton, Larry Bertsch,
Claire Lodovico, Kathy Campellone and James Lenz

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-116
OAL DOCKET NO. 8810-84
REGISTRATION NO. 45235-40

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

: AMENDED
: FINAL ORDER

v.

CALVIN BROOKS,

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of August 14, 1985,

IT IS on this 17th day of SEPTEMBER 1985, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the Commission's order of May 14, 1984, suspending the casino hotel employee registration of Calvin Brooks is vacated; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that this amended final order supersedes the final order in this matter dated September 5, 1985; and

IT IS FURTHER ORDERED that copies of this final order be served upon the Calvin Brooks and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8810-84
AGENCY DKT. NO. 84-116

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner,
v.
CALVIN C. BROOKS,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; **Glenn Stanton,** Law Clerk, appearing pursuant to R. 1:21-3c, at the prehearing conference)

Calvin C. Brooks, respondent, pro se

Record Closed: May 20, 1985 Decided: July 3, 1985

BEFORE **RICHARD L. VOLIVA, JR., ALJ:**

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Calvin C. Brooks, respondent. The Division alleged that Mr. Brooks had committed a criminal offense, which constitutes a violation of section 86c(4) of the Casino Control Act (Act), for which the Division seeks revocation of his casino hotel employee registration, pursuant to N.J.S.A. 5:12-129. The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint and an application for a temporary suspension of the respondent's registration with the Casino Control Commission (Commission) on April 19, 1984. By letter dated April 23, 1984, the Commission advised the respondent of the pending action and of his right to a hearing. Thereafter, the Commission suspended the respondent's registration pending the outcome of the matter. By letter filed with the Commission on June 25, 1984, the respondent requested a hearing. On December 7, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 30, 1985. On March 19, 1985, the Division filed an amended complaint. The matter was heard on May 20, 1985, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Brooks is 28 years of age and resides with his mother.

The respondent is the holder of a casino hotel employee registration, number 45235-40. For the two and one-half years immediately preceding March 1984, the respondent was employed by the Tropicana Hotel/Casino (Tropicana). He was initially employed as a room service attendant, then as a busboy/waiter, and most recently as a bell service attendant. He had a very good employment record. His off-duty days were Wednesday and Thursday. On March 23, 1984, the respondent was suspended from his position by reason of his arrest on that date. The suspension continues pending the outcome of this matter.

On Thursday, March 22, 1984, the New Jersey State Police conducted a search of the respondent's locker at the Tropicana (P-5). The search was conducted with a warrant, which was secured from the Atlantic City Municipal Court, based upon: (1) a statement by another employee that he had accidentally dropped a key into the respondent's locker; and (2) the belief by Tropicana security that the respondent's locker contained a controlled dangerous substance. During the search a vial, which was approximately one inch in height, was discovered on the floor of the locker. The contents

were "field tested" positive for a controlled dangerous substance and were forwarded to a laboratory for examination. The results of the laboratory examination were not produced.

On Friday, March 23, 1984, the respondent was arrested without a warrant at work by the New Jersey State Police. He was charged with a violation of N.J.S.A. 24:21-20a(1), possession of cocaine.

The parties stipulated that a grand jury did not indict the respondent and that the charges against him were dismissed.

Subsequent to his suspension from the Tropicana, the respondent has held various part-time jobs. Currently, he is a courier for a computer company.

The Division also produced proofs with regard to the respondent's criminal record history. However, these proofs were offered solely in regard to the potential issue of penalty, and were not offered to prove any conduct by the respondent with regard to the incident of March 22 and 23, 1984.

On March 16, 1979, the respondent was arrested by the Cherry Hill Township Police and was charged with a violation of N.J.S.A. 2A:139-3, theft of a motor vehicle, concerning an incident on January 21, 1979 (P-1). On November 5, 1980, the charges were downgraded to a violation of N.J.S.A. 2A:170-38, unlawful possession of a motor vehicle and were remanded to the municipal court. On that date, the respondent pled guilty, and he was sentenced to one year's probation.

On March 19, 1979, the respondent was arrested by the Cherry Hill Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana (P-2). On November 23, 1983, the respondent pled guilty and received a $100 fine, $25 costs and a six-month conditional discharge.

On September 20, 1979, the respondent was arrested by the Cherry Hill Police Department and was charged with a violation of N.J.S.A. 2A:170-38, unlawfully taking a motor vehicle on August 22, 1979 (P-3). On November 1, 1979, the respondent pled guilty and was fined $100, plus $25 costs.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute was the testimony of Mr. Brooks concerning the circumstances surrounding the incident of March 22 and 23, 1984.

The respondent testified that he was assigned the subject locker at the Tropicana. The locker was situated on the bottom level of two tiers of lockers. The locker was approximately two feet high by one foot wide. Further, the only opening consisted of air vents which were located in the door of the locker, and which vents protruded from the door at a downward angle, i.e., a key cannot be "dropped" into the locker through the air vents. In addition, the respondent testified that the lockers can be easily broken into by using a butter knife. The respondent also denied that there was cocaine in his locker, and he disclaimed any knowledge or control of whatever was discovered in his locker. Last, the respondent denied using any controlled dangerous substances.

Although the Division did not offer any rebuttal to the respondent's testimony, it is essential to assess the respondent's credibility. Initially, Mr. Brooks' position in this matter must be recognized. He is the holder of a casino hotel employee registration and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during my review of the record that from my observations of the respondent's demeanor, the plausibility of his testimony and my examination of the documentary evidence, that the respondent testified truthfully. The respondent's testimony was sincere and persuasive. As will be discussed, infra, the investigative report produced by the Division does not contain credible evidence sufficient to disprove the testimony of the respondent. In the final analysis, I am persuaded to accept the respondent's testimony in all respects. I so **FIND.**

DISCUSSION OF LAW AND CONCLUSIONS

Because of the absence of a conviction, the Division brought this action under section 86g of the Act. Section 86g provides for disqualification of an applicant or license holder because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. More specifically,

the Division contends that the respondent's misconduct constitutes a violation of N.J.S.A. 24:21-20a(1) and renders continued registration inimical to the policies of the Act under section 86c(4).

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion for participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations

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> related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process.

The Division contended that the respondent possessed cocaine in violation of N.J.S.A. 24:20-21a(1). Accordingly, the Division must prove, by the preponderance of the credible evidence, each of the elements of such an offense. The first element is that the substance is in fact a controlled dangerous substance. State v. Campisi, 23 N.J. 513, 520 (1957). Second, the Division must establish possession by means of the respondent's intent to exercise control and dominion over the substance. State v. Rajnai, 132 N.J. Super. 530, 535-6 (App. Div. 1975). Third, the Division must establish that the respondent knew the nature of the substance in his possession. State v. Brown, 80 N.J. 587, 597 (1979), rev'g, 157 N.J. Super. 110 (App. Div. 1978).

With regard to the identity of the substance found in the respondent's locker, the Division offered only the investigation report prepared by the investigating officers of the New Jersey State Police (P-5). The report revealed that the substance was field tested positive for a controlled dangerous substance at the site. However, the report, and apparently the field test, did not identify the exact nature of the substance found. Further, the report indicates that the substance was sent to a laboratory for analysis; however, the results of that analysis were not produced. Therefore, the issue is the evidential significance of the field test.

The results of a field test will not support a factual determination that a substance is a controlled dangerous substance in a criminal proceeding. Campisi at 519-520; See, State v. Dennis, 43 N.J. 418, 429 (1964). Rather, field tests afford a basis for a preliminary determination, i.e., probable cause, of the nature of the substance. Dennis at 429. However, the results of scientific tests are admissible when they are shown to have a sufficient scientific basis to produce uniform and reasonably reliable results. See, Romano v. Kimmelman, 96 N.J. 66, 80 (1984). There should be evidence that the scientific technique employed by the field test is generally accepted within the scientific community. Also, evidence should be submitted that the person who conducted the field test is qualified. See, State v. Brewer, 344 A. 2d 54, 56 (Me. 1975). Further, a chemical field test may be admissible when its reliability can be tested by cross-examination and rebuttal. Davis v. State, 217 S.E. 2d 343, 345 (Ga.Ct. App. 1975). Thus, the results of a field test without supporting evidence as to its reliability will not

withstand the burden of proof beyond a reasonable doubt to sustain a criminal conviction. Similarly, the results of a field test, which is established to be credible, may support a determination that a substance is a controlled dangerous substance in an administrative proceeding. However, in the case at hand, there was no evidence offered concerning the credibility of the field test, which precludes a finding thereon. Parenthetically, it must also be noted that the field test was only positive for "a controlled dangerous substance," and it did not identify the exact substance. In the absence of any credible evidence to establish the validity and reliability of the field test no reliance can be placed thereon. Accordingly, there is no evidence of the nature of the substance discovered in the respondent's locker.

With regard to the second and third issues, i.e., those of intent to exercise control and knowledge of the substance, the Division produced no direct evidence to refute the respondent's credible testimony that he neither possessed the substance nor had knowledge thereof. However, the Division can satisfy its burden of proof by inferences drawn from circumstantial evidence. Brown at 597-599; Rajnai at 536. Nevertheless, the mere fact that a substance, even assuming arguendo a controlled dangerous substance, was found in the respondent's locker does not establish conclusively constructive possession. See, State v. Murray, 151 N.J. Super. 300 (App. Div. 1977). The fact that the respondent was off-duty on the day preceding as well as the day of the search, the fact that the locker is easily entered and the strange circumstances under which the warrant was issued, i.e., a key was accidentally dropped "upward" into the locker, do not support the Division's contentions. Rather, these circumstances enhance the believability of the respondent's exculpatory testimony.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 24:20-21a(1). Accordingly, I further **CONCLUDE** that the Division has failed to establish a violation of the Act, pursuant to sections 86g and 86c(4).

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Calvin C. Brooks be **DENIED** and **DISMISSED WITH PREJUDICE.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 3, 1985
DATE

Richard L. Voliva J.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

July 9, 1985
DATE

Bernadette D. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

July 9, 1985
DATE

Ronald J. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ml/E

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

P-1 The State of New Jersey v. Calvin Brooks, Municipal Court of the Township of Cherry Hill, Complaint, March 16, 1979

P-2 The State of New Jersey v. Calvin Coolidge Brooks, the Municipal Court of the Township of Cherry Hill, Complaint, March 10, 1979, and Disposition, November 23, 1983 (2 pages)

P-3 The State of New Jersey v. Calvin Brooks, the Municipal Court of the Township of Cherry Hill, Complaint, September 20, 1979, and Disposition, November 1, 1979; Township of Cherry Hill Police Department - Investigation Report, Uniform Arrest Report, Voluntary Statement and Complaint, September 20, 1979 (10 pages)

P-5 New Jersey State Police - Investigation Report, prepared by Detective I Robert Tice, March 22, 1984; New Jersey State Police - Arrest Report, Calvin Coolidge Brooks, March 22, 1984; The State of New Jersey v. Calvin Coolidge Brooks, Municipal Court of Atlantic City, Complaint, March 23, 1984 (4 pages)

EXHIBIT NOT ADMITTED INTO EVIDENCE

P-4Id. Exhibit withdrawn

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Calvin C. Brooks

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-242
OAL DOCKET NO. CCC 947-85
REGISTRATION NO. 40858-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	
v.	FINAL ORDER
RICHARD BROOKS, Respondent.	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 4, 1985,

IT IS on this 17th day of September 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Richard Brooks is dismissed based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Richard Brooks, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 947-85

AGENCY DKT. NO. 84-242

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

RICHARD BROOKS,

Respondent.

Joanne Cocchiola, Deputy Attorney General, on behalf of the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Leonard A. Cinaglia, Esq., on behalf of respondent

Record Closed: June 11, 1985 Decided: July 26, 1985

BEFORE **RALPH J. TOLOMEO,** ALJ:

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking to revoke the respondent's casino hotel employee registration. The Division filed its complaint on July 23, 1984. The issues to be determined are as follows:

1. Whether respondent was convicted of a statutory disqualifier (aggravated assault) on December 4, 1978 pursuant to Section 86(c) of the act;

2. Whether respondent's conviction for second degree murder which occurred in 1976 is comparable to a conviction for murder in New Jersey, pursuant to Section 86(g) and 86(c) of the act; and

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3. Whether Mr. Brooks can prove he has been rehabilitated from these disqualifiers.

PROCEDURAL HISTORY

On January 3, 1985, the respondent filed with the Casino Control Commission his request for a hearing on the complaint of the Division of Gaming Enforcement. On February 21, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in the matter on April 4, 1985, and the hearing was held on June 11, 1985.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 30 year old resident of Atlantic City, New Jersey. He is currently registered as a casino hotel employee no. 40858-40 and has been employed by the Sands Hotel and Casino for approximately three years in the housekeeping department cleaning in the public areas. There is no objection concerning the respondent's business ability or performance in his present position.

Respondent through counsel stipulated that respondent was convicted in the Commonwealth of Pennsylvania of offenses which are statutory disqualifiers in the State of New Jersey. The first statutory disqualifying offense is a conviction of murder in the second degree-which was imposed on November 23, 1976, after his successful appeal of a first degree murder conviction. This conviction resulted in a sentence of not less than two years and eleven months nor more than ten years to the State Prison at Graterford with credit for time served and resulted from an incident which occurred on December 10, 1973 when respondent was approximately 19 years of age. The second conviction occurred on February 27, 1979, when respondent received a sentence of not less than two nor more than five years to the State Prison in Pennsylvania on a charge of aggravated assault. This incident occurred on June 30, 1978, when respondent was approximately 23 years of age. He served time on both of these offenses and was released to parole supervision on July 22, 1981. His parole will expire on October 5, 1985. After his release from prison, he moved from Philadelphia to Atlantic City and obtained employment with the Sands Hotel and Casino. Respondent submitted letters (R-1 through R-6 inclusive) on his behalf.

R-1 is a letter from his supervising parole officer in the Commonwealth of Pennsylvania indicating that during respondent's period of supervision, he has consistently maintained an excellent adjustment and has received good ratings from all of his supervising agents. He has not incurred any arrests or other legal problems and is currently under reduced supervision status which requires that he report only once every six months. In the opinion of the parole officer, respondent is sincere in his desire towards self-betterment and should be given every opportunity to maintain his pro-social lifestyle.

Letters R-2 through R-6 are submitted from various supervising personnel of the Sands Hotel and Casino. In summary they describe respondent as industrious, polite, reliable, diligent and a capable employee. The letters come from people who indicate knowing him over his course of employment at the Sands and also individuals who indicate knowledge of his prior criminal history.

Respondent testified on his own behalf and indicated the second degree murder conviction resulted from being a member of a neighborhood gang. He was the driver of a vehicle from which another gang member shot and killed a waring gang member on the streets of Philadelphia. This incident occurred in 1973 when respondent was approximately 18 years old. He testified that the second incident, the aggravated assault, occurred when he was defending himself. He further testified that he has a five year old son who lives in Philadelphia and he provides voluntary support for his child. He testified that when released from prison on parole he moved to a different environment so he could rehabilitate himself, "make a better person of myself." He testified that he has been in no trouble since his release from prison in July 1981 and that he expects to be completing his parole on October 5, 1985 without further incident.

All of the preceeding evidence is essentially undisputed and, believable, and is, therefore, found as fact.

CONCLUSIONS OF LAW

Pursuant to Sections 91(b) and 86(c) of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant automatically disqualified on the basis of his conviction of an offense enumerated as a disqualifier under the act. It is undisputed that respondent was convicted of offenses of second degree murder and aggravated assault in the Commonwealth of

Pennsylvania. These are disqualifiers under the Casino Control Act and have been stipulated as such by the parties in this matter. Therefore, I **CONCLUDE** that respondent's convictions in the Commonwealth of Pennsylvania for offenses of second degree murder and aggravated assault permit the revocation, suspension or limitation of his registration, pursuant to Sections 86(c) 91(b) and 129 of the Casino Control Act.

The Casino Control Commission has determined that on a finding that a registrant has committed an automatic disqualifying offense, pursuant to Section 86(c) absent rehabilitation, pursuant to Section 91(d) of the act, or waiver, pursuant to Section 91(e) of the act, the appropriate sanction is revocation of respondent's credential. Pursuant to Section 91(d) of the act, no casino hotel employee registration shall be revoked on the basis of a conviction of the offenses enumerated in the act as disqualifying, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation, the Commission shall consider the following factors:

1. The nature and duties of the registrant's position;

2. The nature and seriousness of the offense(s);

3. The circumstances under which the offenses occurred;

4. The date of the offense;

5. The age of the registrant when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense;

8. Any evidence of rehabilitation including good conduct in prison or in the community, counselling or psychiatric treatment received, aquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who have or have had the registrant under their supervision.

The respondent has been employed for over three years by a licensed casino hotel as a housekeeper. It is his current wish to remain in this position. His first arrest occurred in 1973 when he was driving a car at a time when a passenger fired a weapon and killed a waring gang member. He served time for this offense and a subsequent offense which occurred in 1978, namely, that of aggravated assault. At that time, respondent was 24 years old and was still living in Philadelphia. He was incarcerated for both offenses and, having been paroled, moved away from the area which he and his counsel indicated was the primary cause for his involvement with the criminal justice system. It is the recommendation of his parole officer that respondent be given whatever assistance is possible to help him in his career. Several years have passed since respondent has committed an offense. During that time, he has spent time in a penal institution, was released on parole and has taken significant steps to improve his life. He has obtained gainful employment in the legalized gaming industry. The letters from supervisors extol his virtues knowing of his past criminal history. The management of the Sands Casino and Hotel consider him a valued employee.

Based on the foregoing discussion and applicable law, and recognizing that his past offenses were violent in nature arising from gang involvment on the streets of Philadelphia, I **CONCLUDE** that respondent, not withstanding such convictions for otherwise statutory disqualifying offenses under Section 86(c) of the act, has affirmatively demonstrated his rehabilitation within the meaning of Section 91(D) so as to avoid revocation of registration, or any other sanction, pursuant to Sections 91(b) and 129 of the act.

ORDER OF DISPOSTIION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Richard Brooks be and is hereby **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 26, 1985
DATE

Ralph J. Tolomeo
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

July 26, 1985
DATE

Bernadette T. Fripp
CASINO CONTROL COMMISSION

Mailed to Parties:

July 30, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Certified Conviction of the Commonwealth of Pennsylvania, dated August 26, 1983

P-2 Certified Conviction of the Commonwealth of Pennsylvania, dated April 3, 1984

P-3 Transcript of the Court of Common Pleas First Judicial District of Pennsylvania Criminal Trial Division, dated November 23, 1976

P-4 Statute - Criminal Homicide

FOR THE RESPONDENT:

R-1 Letter from John Burke, Supervisor, Commonwealth of Pennsylvania, dated May 30, 1985

R-2 Letter from B. Amanda Weal, Director of Hotel Services, Sands Hotel & Casino, dated May 23, 1985

R-3 Letter from Gloria J. Rives, Mrg. Housekeeping, Sands Hotel & Casino, dated April 11, 1985

R-4 Letter from Arthur Lewis, Vice President of Security, Sands Hotel & Casino, dated April 2, 1985

R-5 Letter from Bradley H. Stone, President, Greate Bay Hotel & Casino, dated August 6, 1984

R-6 Letter from Samuel S. Raffa, Employee Relations, Sands Hotel & Casino, dated May 28, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-89
OAL DOCKET NO. CCC 3765-85
APPLICATION NO. 58038-21

APPLICATION OF THOMAS LEE BRYANT
FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 16, 1985,

IT IS on this 21st day of NOVEMBER 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Thomas Lee Bryant is denied substantially for the reasons stated in initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Thomas Lee Bryant is prohibited from reapplying for obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon the applicant, the Division of Gaming

Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3765-85
AGENCY DKT. NO. 85-EA-89

THOMAS L. BRYANT,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Thomas L. Bryant, pro se

Joanne Cocchiola, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: August 9, 1985 Decided: September 12, 1985

BEFORE **JEFF S. MASIN,** ALJ:

Thomas L. Bryant seeks a license from the Casino Control Commission as a casino employee with a position designation of casino teller. The Division of Gaming Enforcement objected to Mr. Bryant's licensing in a letter of April 15, 1985, directed to the Commission. Mr. Bryant requested a hearing on the Division's recommendation of non-licensure and the matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held on July 23, 1985, and a prehearing order was issued on July 31, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin on August 9, 1985, at the Office of Administrative Law in Trenton.

ISSUES

As noted in the prehearing order, the Division's objections to Mr. Bryant's licensure relate to his alleged failure to disclose two arrests on his Personal History Disclosure Form (PHDF). The first of these arrests occurred in 1970 when Bryant was charged with aggravated assault and battery with a pistol, carrying a concealed deadly weapon and unlawful use of a dangerous weapon. The second arrest occurred in 1977 and was for a gambling violation. The Division argues that Bryant is disqualified from licensure, pursuant to N.J.S.A. 5:12-86(b) in that he withheld material information from the Division and Commission in the course of his licensing application.

As a second issue, the Division argues that the applicant has failed to establish the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-90(b) and 89(b). The Division asserts that the failure of the applicant to disclose his 1970 and 1977 arrests prevents him from meeting the requisite character qualifications and at the same time argues that the nature of the incidents themselves, either one or both, prevent Bryant from establishing his good character, honesty and integrity.

EVIDENCE

The evidence presented by the parties was in the form of testimony from Silvia A. Miles, a Division of Gaming Enforcement agent/investigator who testified on behalf of the Division, and the testimony of Thomas L. Bryant, who was called as a witness by the Division and who then testified in his own behalf as well. Mr. Bryant does not contest the fact that he was indeed arrested in 1970 and again in 1977. Further, he does not contest the fact that he did not list these arrests on the Personal History Disclosure Form (PHDF) as required. He asserts that he did not remember the arrests and therefore inadventently failed to list the matters on his disclosure form, rather than intentionally withholding the information.

Silvia A. Miles testified that as a result of a background investigation conducted in connection with Mr. Bryant's application for licensure she learned of his arrests in 1970 and 1977. She contacted Mr. Bryant by telephone on February 26, 1985 to interview him concerning his application. During this telephone interview she questioned him about his arrest record, first reading to him question 16 of the PHDF which requested information about prior arrests and convictions. She also read in detail the instructions contained on the PHDF with respect to that question. Mr. Bryant said that he understood the question and confirmed his prior written answer on the form that his only arrest was for a child support matter in 1961. Ms. Miles, who was aware of the 1970 and 1977 arrests at the time of the interview, testified that she had obtained documentation from the Bridgeton Police Department in connection with the 1970 aggravated assault and battery, carrying a concealed deadly weapon and unlawful use of a dangerous weapon incident. During her conversation with Mr. Bryant, after he asserted that his only arrest was the 1961 child support incident, Ms. Miles told Bryant about the information which she had concerning his other arrests and only then did he acknowledge these incidents. He did not voluntarily disclose the arrests prior to being presented with specific information about the matters.

Ms. Miles testified that Bryant told her on the telephone that he had forgotten about the two arrests. He then confirmed both the 1970 and 1977 incidents. The 1977 incident involved an illegal card game in a pool hall. Mr. Bryant pled guilty to that charge.

Mr. Bryant was called as a witness by the Division. He was presented with a copy of his confession in connection with the 1970 weapons incident and confirmed that he had in fact confessed and had signed the confession which was a voluntary, accurate and true statement. The incident arose during a time when Bryant and his wife were separated. He was living with his mother and father. Some attempts at "getting together" had occurred, but Bryant had told his wife that these would not work because she was continuing to see a Joseph Smith, a man described by Bryant as his best friend at the time. Bryant advised his wife that she would either have to continue to see Smith or Bryant, but not both of them.

According to Mr. Bryant, on the night of the shooting incident his wife had asked him to take her bowling. He was working a 3:00 to 11:00 p.m. shift. He agreed to get together and sit down and talk with his wife. He ran into some friends and went to a

bar where he called his wife. There was no answer and he continued to make calls from several different bars. When Bryant finally got his wife on the phone she said that she had Smith and her brother as company. She said that she still wanted to get together and have a conversation with Bryant. At 2:00 a.m. Bryant was still at a bar waiting for the men to leave. He left the bar and proceeded to his wife's home which was about a half hour drive. On the way he stopped at his home and got a gun. He then proceeded to his wife's house and pulled around the back. He went to the front door and there was no answer. Peering through the mail slot he heard noise and observed Smith and his wife lying on a couch. He then ran into the kitchen and observed his wife to be "buttoning up." Smith then came toward Bryant and asked Bryant why he was there. Smith pushed Bryant, who offered to leave. A struggle ensued and Smith "went to his pocket." Bryant then pulled his gun and shot Smith. He claimed that he knew that Smith carried a gun.

Bryant described the shooting as occurring as a result of "instinct." He claimed that he had not been drinking at the bars and that he had no intention of starting anything when he went to his wife's home. He got the pistol from his home "for some reason," although he was uncertain as to why he had bothered to get it.

The witness testified that he recalled going to court concerning the matter. He remembered that in October of 1970 he was arrested and that his parents had to come down to the jail. He confessed to the police on the way down to headquarters. As a result of a plea bargain he received six months, although he could not recall the charge upon which he was convicted. He still associates with Smith to this day. He actually spent 45-55 days in the County Jail.

The October 27, 1977 gambling incident occurred in a pool room where a card game was taking place. Bryant was not gambling at the time the police arrived, although he had been gambling earlier in the day. He was merely watching at the time of the raid. He was sentenced to a $25 fine and $10 costs. He described himself as an occasional player who does not gamble at this time.

According to the witness when he received the telephone from Investigator Miles at 1:40 p.m. on February 26, 1985 he told her about the child support incident, which he remembered. The 1970 matter was "a time in his life he had gotten away from." He claims that he never talks about that incident and has "put it out of his life." He "more or less forgot that." In addition to this reason, Bryant testified that he had seen something

about a ten year limit and didn't think he had to put down an arrest that had occurred prior to ten years before the application. However, Bryant then testified that the reason he had not put down the 1970 arrest was that he had "forgotten it." In addition, he also had forgotten the 1977 incident.

Mr. Bryant testified that he would not have left anything out of the application intentionally and that he failed to disclose the information merely because he had forgotten about it.

In addition to the above testimony, Mr. Bryant testified that when he mentioned the 1961 child support incident to Ms. Miles he was really talking about trouble with probation and not an arrest. He denied that he did not disclose the 1970 and 1977 arrests for fear that they would interfere with his licensure. He knew that he had to tell the truth in his application because his brother-in-law works in the casino industry.

Mr. Bryant is 42 years old and a resident of Bridgeton. He is single and has one 18 year old dependent child. She is now in college. Bryant is not employed at this time. His previous employment was at the Trump Castle Casino/Hotel as a change person. He worked there for two weeks, but his employment ended on June 16 when the casino opened and he had no license. Prior to this employment, Bryant was employed for about six months at Clement Pappas, a canning company in Cedarville, New Jersey. He worked for 13 years for Hunt Wesson Foods prior to its closing down. He was a shop steward for the Teamsters for about ten years while so employed.

In addition to his own testimony, Mr. Bryant presented several letters written on his behalf. Among these was a letter from Charles Morris, vice-president of Teamsters Local No. 676 to which Mr. Bryant belongs and for whom he was a shop steward. Morris described Bryant as "well liked" and with a character and honesty "above reproach." George D. Lange, who has known Bryant since 1975, called him "honest and straight forward." Richard Coursey, a friend, describes Bryant, who he has known for over 20 years, as "of good character and honesty." Willie L. Baker, international vice-president and director of the Civil Rights Department of the United Food and Commercial Workers, International Union, who is a cousin of the applicant, testified that he has known Bryant for 35 years and found him to be "hard working, honest and forthright." Reverend Matthew Brown of John Wesley United Methodist Church in Bridgeton stated that he has known Bryant for 12 years and found him to be "quite, conscientious and a hard working

individual." Finally, Douglas A. Goldsborough, Sr., a lay speaker at the John Wesley United Methodist Church, who has known Bryant for 17 years, called Bryant "law-abiding and trusting" notes that Bryant is aware that he has made some mistakes and wishes to "change his life. . . ."

DISCUSSION

An examination of the evidence indicates that Mr. Bryant admits having failed to disclose his 1970 and 1977 arrests when he filled out his PHDF. He claims that he had forgotten these incidents. While I do not have a great deal of difficulty believing that Bryant may have overlooked the 1977 gambling arrest since it involved a card game and a small fine, it is quite difficult to imagine that Mr. Bryant had so completely blocked from his mind the 1970 shooting. While there may be some incidents which are easily excluded from the mind, particularly after 15 years, it seems doubtful that one can so completely blot out an incident in which he shot someone, was arrested, taken to jail, went to court, appeared before a judge and admitted his guilt, and was sentenced to jail. Mr. Bryant spent 45 to 55 days in the County Jail as a result of the incident. The shooting was of a person who he described as his best friend, a person who he is still friendly with and sees regularly. To exclude this incident from the mind to such an extent as to "forget about it" when faced with a question as specific as question 16 is, calling as it does for a listing of "any detaining, holding or taking into custody by any police or other law enforcement authorities," seems unlikely.

Though it is readily understandable that an individual such as Mr. Bryant would like to forget the fact that he had shot someone and had gone to jail for it, and while it is perfectly understandable that Bryant does not talk about the incident, it is far less easy to believe that he was so forgetful of the circumstances as to be able to answer question 16 without any real recollection of having been arrested for shooting Mr. Smith.

Given the above, I **FIND** that Mr. Bryant did not list the 1970 shooting arrest because he felt that listing it might damage his chances of receiving a license. I reject his contention that he forgot the incident and inadvertently did not list it. I **FIND** that this testimony on this point was not truthful and that he did indeed attempt to deceive the Commission and Division by his answer to the written question and by his response to Investigator Miles during the initial portion of their telephone conversation.

I **CONCLUDE** that the applicant failed to disclose information which was clearly material to the licensing process and therefore violated N.J.S.A. 5:12-86(b). As a result of this finding, Mr. Bryant must be denied a license.

With respect to the question of Mr. Bryant's good character, honesty and integrity, his failure to disclose the 1970 arrest precludes a finding that he has the requisite good character, honesty and integrity for licensure. Where one chooses to attempt to deceive the Commission, one can hardly claim that he is of good character and that he is sufficiently honest and trustworthy to be given the privilege of a casino license. In addition, the fact that Bryant was untruthful in his testimony in this hearing further indicates a lack of the requisite characteristics for licensure.

The incidents themselves do not require a denial of licensure on the good character, honesty and integrity question. Had Mr. Bryant properly disclosed his arrests, I would not find either incident to require a denial of licensure as indicative of a lack of good character, honesty and integrity. The gambling incident, while a violation of the gambling laws, occurred sometime ago and appears to have involved nothing more than an illegal card game. The shooting incident occurred 15 years ago and is sufficiently remote not to preclude a finding of good character, honesty and integrity in view of the character references and the indication that Mr. Bryant has been a good worker and union representative over the past years since that incident.

It is unfortunate that Mr. Bryant felt that he could not be truthful in filling out his application and answering the questions put to him by the investigator. However, since he made that choice, he must reap the consequences.

For the reasons set forth, I **CONCLUDE** that Mr. Bryant's application for licensure must be **DENIED.** It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 12, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

September 13, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Sept. 16, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of July 24, 1985, from Charles Morris

P-2 Letter of July 6, 1985, from George D. Lange

P-3 Letter of August 1, 1985, from Richard Coursey

P-4 Letter of July 25, 1985, from Willie L. Baker, Jr.

P-5 Letter of July 30, 1985, from Reverend Matthew Brown

P-6 Letter of July 26, 1985, from Douglas A. Goldsborough, Sr.

On behalf of respondent:

R-A Arrest report, dated February 28, 1970

R-B Operation's report of March 2, 1970

R-C Statement of Thomas Bryant, dated February 28, 1970

R-D Statement of Viola Bryant, dated February 28, 1970

R-E Arrest report, dated October 27, 1977

R-G United States Department of Justice, Federal Bureau of Investigation criminal record sheet, dated January 9, 1985

R-H Statement of George Cuff, dated February 28, 1970

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-21
LICENSE NO. 33794-21
REGISTRATION NO. 28469-40
OAL DOCKET NO. CCC 3443-85

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant

FINAL ORDER

v.

JOHN J. CIECHANOWSKI,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 2, 1985;

IT IS on this 18th day of October 1985, ORDERED that the initial decision is modified as follows:

> The finding of the ALJ that the respondent's conviction for theft of $100 from his employer, the Tropicana, was equivalent to a breach of his fiduciary duty in violation of N.J.S.A. 2C:20-2(b)(2)(e), a crime of the third degree and a disqualifying offense under N.J.S.A. 5:12-86(c)(1) and (g) is rejected. The Commission finds instead that the conviction is for an inimical offense which disqualifies the respondent from licensure and registration pursuant to section N.J.S.A. 5:12-86(c)(4).

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration of John J. Ciechanowski are revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that John J. Ciechanowski is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon John J. Ciechanowski, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3443-85

AGENCY DKT. NO. 85-21

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

JOHN J. CIECHANOWSKI,

Respondent.

Robert Bratman, Law Clerk, appearing pursuant to N.J.A.C. 1:1-3.12(a)2 (Irwin I. Kimmelman, Attorney General of New Jersey, Attorney)

John J. Ciechanowski, respondent pro se

Record Closed: August 12, 1985 Decided: August 21, 1985

BEFORE **STEPHEN W. THOMPSON,** ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) seeks revocation of Mr. Ciechanowski's casino employee license number 33794-21 and casino hotel employee registration number 28469-40 pursuant to Section 129 of the Casino Control Act (Act). The Division alleges that Mr. Ciechanowski committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, and is statutorily disqualified from licensure pursuant to Section 86c(1) of the Act. Furthermore, the Division contends that Mr. Ciechanowski does not possess the requisite good character, honesty and integrity for casino employee licensure pursuant to Section 89b(2). Respondent asserts rehabilitation both as to his casino license and his hotel employee registration pursuant to Section 90d and argues that he does possess good character, honesty and integrity as to his casino employee license.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on February 1, 1985. The Division applied for suspension of respondent's casino employee license and/or casino hotel registration. An order suspending respondent's casino employee license and casino hotel employee registration was issued by the Casino Control Commission on February 15, 1985. On May 27, 1985, the respondent requested a hearing and the Commission transmitted the matter to the Office of Administrative Law on June 3, 1985 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 11, 1985 and the matter was scheduled for hearing. The matter was heard on August 12, 1985 at the Atlantic City Civil Courthouse, Atlantic City, New Jersey.

FINDINGS OF FACT

Mr. Ciechanowski is 22 years of age and has resided in the State of New Jersey for his entire life. He currently resides with his family in Brigantine, New Jersey.

On December 24, 1984, respondent was employed by the Tropicana Casino Hotel in the hard count room. On that day, the hard count employees had completed impressment and were leaving when Mr. Charles Carlton, the hard count supervisor, noticed respondent holding his crotch with both hands as he walked toward the door. As respondent reached for the door with one of his hands, a roll of silver dollars fell out of his pant leg and onto the floor. Mr. Carlton recovered the roll of silver dollars and escorted respondent to the cage manager's office. While in the manager's office, respondent surrendered an additional four rolls of silver dollars from the area of his crotch.

Upon investigation, State Police Detective U. Mannikus of the Casino Investigation Unit, arrested respondent John Joseph Ciechanowski and charged him with violation of N.J.S.A. 2C:20-3, theft by unlawful taking, concerning the theft of five rolls of Susan B. Anthony silver dollars valued at $100 from the Tropicana Casino Hotel.

On January 25, 1985, the respondent pled guilty to a disorderly person's violation of N.J.S.A. 2C:20-3, theft by unlawful taking in the amount of $100 and was

sentenced to a 30-day jail sentence. The jail sentence was suspended and respondent was fined $200, $25 court costs and $25 for violent crimes compensation.

On February 15, 1985, the Casino Control Commission ordered the suspension of respondent's casino employee license and casino hotel registration pending final disposition of the complaint filed by the Division.

The respondent testified to the circumstances underlying this incident. On the day in question, he needed the money to make a payment on his new car. He readily admitted to taking the money, however, respondent emphasized that he had never stolen anything before and would never consider stealing again. Mr. Ciechanowski stated that the incident was an aberration of his normally law abiding existence. He feels embarassed by the incident and expressed deep remorse. Respondent explained that he has been collecting unemployment benefits since his termination from the Tropicana Hotel Casino. However, he has secured a position as a laborer with Toll Construction, Inc. starting on August 19, 1985. Both his past and present employment history is unremarkable. Respondent presented letters from Richard Toll (R-1) and Dennis M. Prosinski (R-2) attempting to establish his reputation for good character, honesty and integrity. The letters have been entered into evidence, however, I make no findings based upon the contents contained therein.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revokable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against a license held by the person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division has alleged that the respondent's conduct constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(e), because the respondent committed the unlawful taking in breach of his obligation in his capacity as a fiduciary to his employer. Such conduct would constitute a disqualifying offense under Section 86c(1) of the Act.

There is no dispute that Mr. Ciechanowski's conduct on December 24, 1985, constituted a violation of N.J.S.A. 2C:20-3(a), theft by unlawful taking. In fact, he pled guilty to the charge. However, because the amount taken was $100 he was only adjudged guilty of a disorderly person's offense, pursuant to N.J.S.A. 2C:20b(3). Such a conviction is not a per se disqualifier under Section 86c(1). Nevertheless, the Division has contended that the respondent committed the offense in breach of his obligation in his capacity as a fiduciary. Therefore, it must be determined whether the respondent breached a fiduciary duty at the time he committed the offense.

N.J.S.A. 2C:21-15 establishes that a:

> "fiduciary" includes trustee, guardian, executors, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or any organization which is a fiduciary.

In McLaughlin (Es. of McLaughlin) v. Chicken Delight, Inc., 321 A. 2d 456, 459, 164 Conn. 317 (1973), citing Restatement (2nd) of Agency, it was well established that:

> Agency is the fiduciary relationship which results from a manifestation of consent by one person to another that the other shall act on his behalf and subject to his control the consent by the other so to act.

The right of the principal to control the conduct of the agent is an essential element of any agency relationship. Arcell v. Ashland Chemical Co., Inc., 152 N.J. Super. 471, 494 (1977). In Tiernan v. Carasaljo Pines, 51 N.J. Super. 393 (1958), it was stated at 408 that a party:

> Who undertakes to act for another in a matter of trusting confidence, whether he acts gratuitously or for compensation, is under a duty not to act contrary to the interests of the one relying upon his integrity. It is a duty created for the purpose of protecting the confronting interest and is in harmony with sound public policy.

It is clear that Mr. Ciechanowski owed a fiduciary duty to his employer, Tropicana Casino Hotel. Mr. Ciechanowski was acting under the direction and on behalf of the employer. Therefore, there can be no doubt that the respondent was acting in the capacity of a fiduciary when he committed the offense.

I **CONCLUDE** that the Division has established that on December 24, 1984, the respondent committed a violation of N.J.S.A. 2C:20-3, which constituted a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(e).

(B) N.J.S.A. 5:12-89b(2)

Under Section 89b(2) of the Act, Mr. Ciechanowski was required to demonstrate, by clear and convincing evidence good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (Feb. 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an application, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to casino employee licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strickness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corp., supra at 2.

The inability of the respondent to establish his rehabilitation from his recent criminal conduct precludes his ability to show that he possesses the degree of good character, honesty and integrity required to maintain licensure. In addition, it was evident that the respondent's misconduct was knowing and premeditated. The respondent's explanation of the circumstances underlying his misconduct was not persuasive and did not serve to mitigate the seriousness of his actions. Accordingly, it is clear that the respondent has failed to maintain the requisite degree of good character, honesty and integrity.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he possesses the requisite degree of good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

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(C) N.J.S.A. 5:12-91d

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabiliation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabiliation is to be made:

(1) Nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release program or the recommendations of persons who have the applicant under their supervision.

Only one out of the eight enumerated criteria would apply favorably to respondent; that is, the offense appears to be an isolated incident. There can be no doubt that the commission of a theft offense by a licensed employee of a casino within the scope of his official duties creates a real peril in regard to the public confidence in the casino industry and the perceived integrity of gaming operations. Such conduct is more heinous than the commission of a theft outside the scope of employment and which would be an automatic disqualifier pursuant to section 86c(1) of the Act. The seriousness of respondent's conduct is further emphasized by the fact that his actions were a purposeful

and knowing violation of the law. In light of the seriousness of the offense and the fact that an insufficient period of time has passed to evaluate reasonably respondent's purported rehabilitation, I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's registration and casino license. Given the fact that the respondent cannot demontrate his rehabilitation from his misconduct and there being no mitigating factors, the respondent's registration and casino license must be revoked. I so **CONCLUDE.**

ORDER OF DISPOSITION

It is **ORDERED** that the hotel employee registration (registration no. 28469-40) and the casino employee license (license no. 33794-21) held by John J. Ciechanowski be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8-21-85
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

August 23, 1985
DATE

Nancy Q. Lynch
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

August 26, 1985
DATE

Ronald J. Parker/ks
OFFICE OF ADMINISTRATIVE LAW

ks

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WITNESS LIST

For respondent:

John J. Ciechanowski

EXHIBIT LIST

For petitioner:

P-1 New Jersey State Police report, dated December 24, 1984

P-2 New Jersey State Police arrest report, dated December 24, 1984

P-3 New Jersey State Police victim property loss report, dated December 24, 1984

P-4 Judgment of Conviction, dated January 25, 1985

For respondent:

R-1 Letter from Richard Toll on Toll Construction Company letterhead, dated July 28, 1985

R-2 Letter from Dennis M. Prosinski, dated July 27, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-157
LICENSE NO. 22481-21
OAL DOCKET NO. CCC 0948-85

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

DONALD R. CROSS,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 3, 1985,

IT IS on this 13rd day of August 1985, ORDERED that the initial decision is modified as follows:

(1) The Commission rejects the finding that the respondent has engaged in conduct which would render his continued licensure inimical to the Casino Control Act and casino operations pursuant to sections 86(c)(4) and (g) of the Act. The Commission finds that the respondent's conduct on February 22, 1984, does not undermine his continued demonstration of good character, honesty and integrity required by section 89(b)(2) and 90(b) of the Act.

(2) The Commission finds that the respondent has violated N.J.A.C. 19:47-1.2(a)(13) and (17) by failing to "take down" two losing craps bets and by placing winning bets after the roll of the die.

(3) Upon consideration of all the circumstances presented, the Commission concludes that an appropriate sanction for said violation is a one-month suspension of respondent's casino employee license. Accordingly, the Commission rejects the sanction of a six-month suspension recommended by the ALJ.

IT IS FURTHER ORDERED that based upon the initial decision, as modified, which is incorporated herein by reference, the casino employee license of Donald R. Cross is suspended for one month, beginning at 12:01 a.m. on September 7, 1985, through 11:59 p.m. on October 6, 1985; and

IT IS FURTHER ORDERED that during this period of suspension, Donald R. Cross shall not be entitled to receive any form of compensation or remuneration from any casino licensee; and

IT IS FURTHER ORDERED that copies of this final order be served upon Donald R. Cross, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 0948-85
AGENCY DKT. NO. 84-157

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
DONALD R. CROSS,
Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Donald R. Cross, pro se

Record Closed: May 6, 1985 Decided: May 13, 1985

BEFORE **JEFF S. MASIN,** ALJ:

The Division of Gaming Enforcement seeks an order from the Casino Control Commission imposing sanctions on the casino employee license previously issued to Donald R. Cross. A complaint to this affect was filed with the Commission on May 14, 1984. The complaint charged that Cross had been suspended by the Sands Hotel for improper conduct and had been arrested and charged with cheating and swindling at casino gaming, a violation of N.J.S.A. 5:12-113, in connection with an incident occurring on or about February 22, 1984, during the course of Cross' employment as a dealer at the Sands Hotel/Casino. Mr. Cross requested a hearing on the proposed action and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A.

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52:14F-1 et seq. A prehearing conference was held on March 27, 1985, and a prehearing order was issued on April 4, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin at the Galloway Township Municipal Court on May 6, 1985.

At the hearing, evidence was presented which established that the disorderly persons complaint filed against Mr. Cross in the Atlantic City Municipal Court as a result of his alleged involvement in the cheating at the Sands on February 22, 1984, was dismissed at the recommendation of the Chief of the Casino Prosecutions Section of the Division of Gaming Enforcement. The reason for the recommendation was that in view of the Division's conclusion that the casino employees involved did not profit from the incident, that the matter was not preplanned and that there was no collusion with two females who received illegal payoffs during the incident, that the matter should be handled administratively rather than in the courts.

The Division of Gaming Enforcement presented as evidence in support of its case the investigation report filed by Detective R. Bunkowski of the New Jersey State Police. This report details statements received from various individuals allegedly connected to the incident of cheating as well as a summary of observations made from a video tape surveillance of craps table no. 8 in the Sands Hotel between 10:03 p.m. and 10:14 p.m. The video tape revealed that two improper payments, totaling $22, were made to two unidentified females who were playing craps at the table during that time.

Donald R. Cross, 25 years old and the respondent in this action, was called to testify on behalf of the Division. Mr. Cross testified that on February 22, 1984, he was assigned to craps table no. 8, working under the supervision of a floorperson, one Robert J. Napoliello. Other individuals working at the table were Al Huber, a boxperson, and Charles Barksdale, who dealt from the third base position during part of the incident. Another individual involved was Tony Zito, who served as the relief floorperson for Napoliello during the time when the surveillance tape revealed the two illegal payoffs occurred.

Mr. Cross testified that on the night in question he had observed some conduct by Robert J. Napoliello, allegedly known as "Mad Dog", which led Cross to become frightened.[1]

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[1] Napoliello allegedly became upset at an employee and cursed at him.

According to Cross, Napoliello had a reputation for getting extremely upset, yelling and cursing at both players and dealers, and Cross had seen Napoliello exhibit this type of conduct on occasions prior to the February 22 incident. Cross described Napoliello as someone that he didn't want to bother with.

On the night in question, Cross was dealing from the third base position when two unidentified girls came up to the craps table. They stood next to the stickman and it became apparent that they did not know how to play.

Cross described his role as dealer as involving taking down losing bets and paying winners. He observed that the two girls started to bet. On one occasion they placed a bet which was a loser; however, Napoliello instructed Cross to give back the girl's money because the bet had been "placed late." In fact, according to Cross, the girls should have lost their money on that bet. However, Cross did not argue with Napoliello about Napoliello's order.

At a later time, one of the girls put down a five dollar come bet on the come line. A three crap roll occurred which was a losing bet. Cross began to take down the bet when Napoliello instructed him not to and said that "she wants the four, put it on the four." Cross followed this instruction and the four hit, resulting in a $9 payout.

After these incidents, Cross left the table on his break. He then returned and found the girls were still there. He was on the stick. His responsibilities including setting up the bets and sending out the dice. Charles Barksdale was dealing at third base and Huber was the boxperson. Cross was uncertain whether Napoliello or Tony Zito was then acting as the floorperson.

Cross testified that after his return from his break, while serving on the stick, he observed the girls place a $1 any craps bet. Such a bet would pay $7 if a 2, 3 or 12 hit. An 11 came up which was a losing bet for both girls. Cross began to take down the bet when Huber told him to set up a C and E bet. He did so and a winning role occurred, resulting in a $14 payoff. Another incident of the same nature occurred later on.

Cross testified that he was called into the office at around 10:00 p.m. and was shown the surveillance tape which only showed the two C and E bets. He advised his supervisors what had happened. He was suspended for three days without pay.

Mr. Cross testified that he engaged in the illegal payoffs because he was scared and didn't know what to do or who to go to. He recognized that what he did was wrong at the time that it occurred. He had been employed at the Sands for four years and is still employed there. He believes that as a result of this incident both he and other individuals know what they are to do where such illegal payoff instructions are given.

DISCUSSION

In his testimony, the respondent admitted his involvement in certain illegal payoffs. Detective Bunkowski's report corroborates that incidents did occur and that the video tape confirmed the two C and E payoffs. Cross attributed his conduct to fear of Napoliello, although his explanation as to why he feared this individual and the circumstances which led him to specifically act as he did out of such alleged fear is limited and rather unconvincing. Perhaps Cross did have some feeling that Napoliello might do something to adversely affect him if he, Cross, did not follow Napoliello's instructions. However, Cross could not even testify that Napoliello was on the floor at the time of the two C and E payoffs and he acted illegally with respect to these as a direct result of Huber's instructions. Cross did not testify that Napoliello had specifically told him to follow Huber's instructions. Cross did indicate however that while working he tended to follow the instructions of his supervisors, apparently without question, even where he was aware that they were acting in an improper and perhaps illegal fashion.

The police report concerning the incident reveals the versions of various other individuals such as Huber, Zito and Napoliello, as well as Barksdale. Nothing in the report counters the indication that certain illegal activities occurred, although Napoliello denied any involvement whatsoever. He was found not to have violated N.J.S.A. 5:12-113 in his hearing before then Administrative Law Judge Valarie H. Armstrong, State of New Jersey, Dep't of Law and Public Safety, Division of Gaming Enforcement v. Robert J. Napoliello, CCC 5983-84, Initial Decision, March 29, 1985.

From the evidence presented in this case, I **CONCLUDE** that Mr. Cross did violate N.J.S.A. 5:12-113, in that he admittedly engaged in cheating and swindling at a casino game by knowingly and intentionally making improper payoffs in connection with the two C and E bets. From the evidence presented in this case, it also appears that Cross may have returned money to the girls on the "late bet" when in fact the casino should have won the money, although Napoliello did not testify in this proceeding as to his reasons for directing that this money be returned.

The deputy attorney general advised the administrative law judge that despite Cross' violation the Division does not now seek revocation of Mr. Cross' license. Given the circumstances, including the clear indication that Cross was not involved in any conspiracy or plan to engage in a systematic defrauding of the casino on behalf of individuals with whom he had some connection, I can perhaps understand the Division's reluctance to press for revocation in this matter. However, because of the severe implications of any illegality in the activities of casino employees actually involved in casino gaming, I cannot in good conscious find that the penalty already suffered by Mr. Cross in the form of a three day suspension without pay by his employer is sufficient. It appears that a significant suspension of Cross' license is necessary in order to drive home to every individual involved in casino gaming the absolute responsibility of every casino employee to avoid any involvement in illegal payoffs or other illegalities in connection with the casino games themselves. The integrity of the casino industry, and public confidence in the integrity of the games, absolutely demands that those who participate in any form of illegality involving the games be sharply dealt with. Public policy cannot tolerate anything less, if the Act is to have any meaning as a vehicle for protecting the public, and the industry. It is only because of the seeming spontaneity of this incident and Cross' obvious lack of connection with the girls and apparent lack of any gain that I can in any good conscious recommend something less than a revocation.

Given all the circumstances and the considerations involved, I **ORDER** that Mr. Cross' casino employee license be suspended for a period of six months.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 13, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

May 15, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE MAY 17 1985

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

For Petitioner:

P-1 Investigation Report, 5 pages; Arrest Report, 3 pages; Municipal Court complaints, 3 pages

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-40
OAL DOCKET NO. CCC 2008-85
APPLICATION NO. 3066-11
LICENSE NO. 15877-21 (INACTIVE)

APPLICATION OF DONNA M. DAVIS

FOR A CASINO KEY EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of October 2 and October 9, 1985,

IT IS on this 6th day of JANUARY 1986, ORDERED that the initial decision be modified in the particulars and for reasons stated in the Final Commission Decision dated December 27, 1985; and

IT IS FURTHER ORDERED that the casino key employee license application of Donna M. Davis is denied based upon the reasons set forth in the Final Commission Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Donna M. Davis is prohibited from applying for or obtaining any license,

registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Donna M. Davis, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2008-85

AGENCY DKT. NO. 85-EA-40

DONNA DAVIS,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Raymond Lee, Esq., for petitioner (Cape Atlantic Legal Services)

Ralph Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 23, 1985 Decided: August 12, 1985

BEFORE **EDGAR R. HOLMES,** ALJ:

Donna Davis, the petitioner, applied for a position as a key casino employee. By letter dated January 11, 1985, to the Casino Control Commission, the Division of Gaming Enforcement objected to her licensure. The basis of the Division's recommended denial was the petitioner's alleged failure to satisfy the requirements of showing financial stability, integrity and responsibility; her failure to establish her good character, honesty and integrity; her acquisition of a criminal record, and her alleged failure to establish her business ability and casino experience. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was conferenced on May 21, 1985, and a plenary hearing was held on July 9, 1985, in Atlantic City. The record was held open until

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July 23, 1985, in order to give the petitioner, who had obtained legal counsel on short notice, time to submit affidavits of good character on her behalf and to give the Division of Gaming Enforcement an opportunity to respond if it deemed it necessary.

The parties stipulated that the petitioner was convicted of violating N.J.S.A. 2C:20-9.

UNCONTESTED FACTS

1. Petitioner was employed at the Sands Casino for approximately four and one-half years in the soft count room. She was simultaneously employed as an income maintenance technician by the Atlantic County Welfare Board.

2. On December 2, 1982, petitioner was indicted in Atlantic County for theft for failure to make the required disposition of funds that came into her control in her position as an income maintenance technician at the Atlantic County Welfare Board.

3. On February 14, 1983, petitioner pled guilty to the fourth degree crime of theft (two counts) and on March 4, 1983, she was sentenced to a fine of $500, probation for three years and was ordered to make restitution of $646. She was also ordered to pay $50 to the Violent Crimes Compensation Board fund.

4. Petitioner's probation was terminated early when she made the required payments through her probation officer.

5. Petitioner did not advise her employer, the Sands Casino, of her conviction.

6. In February 1984, petitioner's employer requested that she apply for a key employee license and she obtained a temporary key employee license.

7. On the application for a casino key employee license, petitioner divulged her conviction for the first time and, as a consequence, her temporary license was not renewed.

The petitioner produced her supervisors at the Sands Casino, who testified and gave affidavits to the effect that she was an outstanding employee. They, however, had not been aware of her conviction. The petitioner's mother testified and told the tribunal that her daughter was innocent of the charge of theft, although she admitted that her daughter had recklessly gotten herself in debt.

The petitioner testified that she was innocent of the charges to which she pled guilty and did so for only three reasons:

1. she "only had a public defender";

2. she wanted to get it over with; and

3. she felt responsible for the loss even though she did not steal the money.

The petitioner relied heavily on her Sunday school experience to buttress her testimony. She supplied an affidavit from her pastor.

I did not believe the petitioner's testimony that she was innocent of the crime to which she pled guilty.

I make two additional **FINDINGS OF FACT** based upon the documents in evidence and the testimony of the witnesses:

8. The petitioner was a good employee at the Sands Casino during her periods of employment.

9. The petitioner voluntarily pled guilty to two counts of theft from her employer because she was guilty.

I **CONCLUDE** from the documents in evidence and from the testimony adduced that the crime for which petitioner was convicted is not a statutory disqualifier enumerated in section 86 of the Casino Control Act because her pleas were to fourth degree offenses of theft. On the other hand, I **CONCLUDE** that the petitioner's conviction for theft from an employer renders her licensure inimical to the policies of the Casino Control Act and casino operations.

N.J.S.A. 2C:20-9, the crime to which petitioner pled and for which she was convicted, is the recodification of the embezzlement statute. To place a convicted embezzler in a casino counting room without clear and convincing evidence of that individual's honesty, good character and integrity would undermine public confidence in the casino industry. Since I am satisfied that the petitioner lied when she attempted to explain away her conviction, she has not met her burden to disprove inimicality, which is substantially similar to proving rehabilitation. Division of Gaming Enforcement v. Brian R. Worthey, OAL DKT. CCC 7866-84 (Mar. 19, 1985), adopted, Casino Control Commission (May 1, 1985).

I further **CONCLUDE** that petitioner produced no believable evidence on the issue of her reputation for good character, honesty and integrity or on the issue of her financial stability, integrity and responsibility.

I **ORDER** that petitioner's application for a casino key employee license be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 13, 1985
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

August 13, 1985
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

August 15, 1985
DATE

Ronald A. Parker/x.s.
OFFICE OF ADMINISTRATIVE LAW

ks

EXHIBIT LIST

R-1 not admitted

R-2 Indictment, LR-34, Sentencing reasons, Sentence work sheet, certification

P-1 Affidavits of Beatrice Muller, Bradford Berry, John R. Cuillo

WITNESS LIST

For petitioner:

Shirly Davis
Donna Davis
Harry Demaria

For respondent:

Richard Travers

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-40
OAL DOCKET NO. CCC 02008-85
APPLICATION NO. 3066-11
CASINO EMPLOYEE LICENSE NO.
15877-21 (INACTIVE)

APPLICATION OF DONNA M. DAVIS

FOR A CASINO KEY EMPLOYEE LICENSE

FINAL COMMISSION DECISION

Raymond Lee, Esquire, appeared for the applicant.
Ralph Fusco, Deputy Attorney General, appeared for the Division of Gaming Enforcement

This matter arises out of the application of Donna M. Davis (applicant) for a casino key employee license pursuant to section 89 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter, the Act).[1] The Division of Gaming Enforcement (Division) objected to the applicant's licensure based primarily upon her conviction on February 14, 1983, for two counts of theft by failure to make the required disposition of the sums of $273 and $373, both fourth degree offenses, in violation of N.J.S.A. 2C:20-9. The Division contended that the applicant's conviction constituted grounds for disqualification pursuant to section 86(c) of

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1. Sections of the Casino Control Act may be cited throughout this opinion by the section number only, omitting the prefix "N.J.S.A. 5:12-."

the Act. The Division also contended that the applicant lacked the financial stability, integrity and responsibility and good character, honesty and integrity required by sections 89(b)(1) and (2).

On April 9, 1985, pursuant to the applicant's written request for a hearing filed on April 1, 1985, the matter was transmitted to the Office of Administrative Law (OAL) in accordance with N.J.S.A. 5:12-107(a)(1), N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq. A prehearing conference was held and the matter proceeded to a formal hearing before Administrative Law Judge Edgar R. Holmes (ALJ) on July 9, 1985.

On August 13, 1985, the ALJ filed an initial decision with the Commission recommending that the application for licensure be denied. A copy of this initial decision is appended as A-1 to A-6 for convenient reference. No exceptions or objections to the initial decision were filed.

The parties addressed the Commission at its public meeting of October 2, 1985, and upon review and consideration of the initial decision and the entire record of the proceedings, we determined at our public meeting of October 9, 1985, by a vote of 5-0, to affirm the ALJ's decision to deny the casino key employee license application. Despite our concurrence with the ALJ's

recommendation to deny the application, we do not adopt his initial decision in its entirety.

We agree with the ALJ that the application for a casino key employee license should be denied based upon the applicant's commission of an offense which requires her disqualification pursuant to section 86(c)(4). We also affirm the ALJ's conclusion that Ms. Davis had failed to demonstrate her good character, honesty and integrity by clear and convincing evidence as required by section 89(b)(2). However, the facts relevant to financial stability, integrity and responsibility pursuant to section 89(b)(1), were not adequately developed at the hearing. Thus, the record with respect to this issue is incomplete. In view of our disposition of the remaining issues, however, we need not determine whether the applicant is qualified under section 89(b)(1). The ALJ's conclusion on this issue is rejected based upon the insufficiency of the record.

We issue this opinion to set forth more fully our reasons for modifying this initial decision and to rectify certain misconceptions that have arisen in this and other cases concerning disqualification pursuant to section 86(c) generally, and section 86(c)(4) in particular.

ISSUES

In a contested case involving an application for

licensure under the Casino Control Act, the issues are initially identified in the letter-report submitted by the Division of Gaming Enforcement (Division) in furtherance of its obligation to investigate the qualifications of each applicant and provide the necessary information to enable the Commission to make the appropriate determination. See N.J.S.A. 5:12-76. The letter-report also serves as the "first pleading" in the administrative hearing process (see N.J.A.C. 1:1-6.1 et seq.), which is usually conducted in the Office of Administrative Law (OAL)[2]. (See N.J.S.A. 52:14F-1 et seq.). The significance of the letter-report at this stage of the administrative process is to put the applicant on notice of the affirmative qualification criteria which he or she is obligated to prove by clear and convincing evidence (sections 89(b) and 90(b)), and also to provide notice of any disqualifying criteria (section 86), which, if ultimately found by the Commission to exist in the record as

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2. Under section 107(a)(1) of the Act the Commission may hear the matter directly or the Chairman may, in his discretion, designate a Commissioner to serve as hearing examiner in a particular case. The letter-report is not considered a pleading unless and until the Commission determines that a hearing on the merits of the application is to be conducted. If not, there is no formal proceeding and the letter report remains confidential so as to protect the privacy of the applicant. See N.J.S.A. 5:12-74(d) and (e).

a whole by a preponderance of the evidence, may result in the denial of the application. See In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (Commission decision February 26, 1979) [hereafter, Resorts]. See also, In the Matter of the Application of Antonio Tufi for Licensure as a Casino Key Employee, 182 N.J. Super. 631, 638-39 (App. Div. 1982), certif. den. 81 N.J. 189 (1982). The issues to be addressed at the hearing and resolved in the resulting initial decision are, however, subsequently refined and clarified at the prehearing conference and thereafter memorialized in the prehearing order. N.J.A.C. 1:1-10.1(c).

In the letter-report concerning Ms. Davis dated January 11, 1985 (copy attached), the Division recommended denial of the application on three grounds: failure to demonstrate financial stability, integrity and responsibility (section 89(b)(1)); failure to demonstrate good character, honesty and integrity (section 89(b)(2)); and disqualification due to the applicant's 1983 conviction on two counts of theft by failure to make required disposition of property received, fourth degree offenses, in violation of N.J.S.A. 2C:20-9, which the DGE contended should be aggregated to constitute a third degree theft offense and thus an enumerated disqualifying offense under section 86(c)(1). The first two bases for the Division's objection to licensure relate to

affirmative criteria concerning which the applicant bears the burden of proof by clear and convincing evidence. The latter disqualification issue is one which must be established in the record as a whole, but as a practical matter it is the Division's burden to prove the existence of the disqualifier by a preponderance of the credible evidence.

The letter-report indicated that the applicant's criminal record was the basis for the good character, honesty and integrity objection. The financial stability, integrity and responsibility objection was predicated upon "numerous outstanding judgments" against the applicant and other outstanding debts which had not been reduced to judgments. The applicant's creditors and the amounts owed were specifically listed in the letter-report. Also noted was an IRS judgment that had been satisfied. Lastly, the Division reported that the applicant had not provided federal income tax returns for the years 1979, 1980 and 1982, but advised that she had requested those forms from the IRS and would furnish them to the Division upon receipt.[3]

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3. The Personal History Disclosure Form for a casino key employee license requires the applicant to furnish
(Footnote Continued)

The prehearing conference was held on May 21, 1985. In attendance were the ALJ, the petitioner appearing pro se and the Deputy Attorney General representing the Division. The resulting prehearing order identifies the issues thusly:

> [W]hether the applicants [sic] conviction for theft in violation of N.J.S.A. 2C:20-9 disqualifies her for licensure pursuant to N.J.S.A. 5:12-86 and if so, is she rehabilitated pursuant to N.J.S.A. 5:12-90? Additional issue [sic] are the applicants [sic] good character, honesty and integrity, her failure to produce income tax records, and her financial stability, integrity and responsibility all of which are required by N.J.S.A. 5:12-89.

This statement of the issues is inadequate in several particulars. The most significant error is the reference to rehabilitation pursuant to N.J.S.A. 5:12-90. To be more precise, the intended (but inapposite) reference is undoubtedly to subsection 90(h) which does indeed provide for rehabilitation from a conviction for an enumerated disqualifier pursuant to section 86(c). However, section 90 of the Act concerns only applicants for casino employee licenses. By its terms, the Act does not provide the opportunity for casino key employee license applicants to

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(Footnote Continued)
federal income tax forms for each of the last five years preceeding application. See N.J.S.A. 5:12-89(a)(1).

demonstrate rehabilitation from a per se disqualifying offense which has occurred within ten years preceding the application. Only casino employee and casino hotel employee registrants have the opportunity to demonstrate their rehabilitation pursuant to sections 90(h) and 91(d), respectively. Thus, the reference to rehabilitation under section 90(h) was incorrect. As will be seen in the ensuing explanation, however, the concept of rehabilitation is an essential part of the "inimical analysis" upon which this case turns. Hence, the ALJ's finding that the applicant failed to prove by clear and convincing evidence that she is presently rehabilitated is helpful to our resolution of Ms. Davis's application.

The prehearing order's statement of the issues is also deficient in that it fails to specify precisely the statutory basis for disqualification. The order refers to disqualification "pursuant to N.J.S.A. 5:12-86." The Division letter-report cited "N.J.S.A. 5:12-86(c)." Reference to the pertinent subsections of section 86(c), in this instance -86(c)(1) and (c)(4), could well have precluded the difficulties that developed in the course of the hearing and resulted in an unsatisfactory initial decision.

We do not fault the Division for espousing the theory that the dollar amounts of the applicant's two thefts could

be aggregated to rise to the level of a third degree offense, although, like the ALJ, we do not approve it under the circumstances of this case. However, if the Division's contentions were to be accepted, the basis for disqualification would be subsection 86(c)(1). The statement of issues should have also addressed the possibility that the Division's contention was erroneous. In that case, while neither theft offense would be an expressly listed disqualifying offense under 86(c)(1), each would still be a potentially disqualifying event under the so-called inimical offense category of subsection 86(c)(4).

One other less significant error in the prehearing order is the reference to the applicant's failure to produce income tax records. The letter-report clearly states and the transcript of the hearing confirms that the Division was not concerned with the applicant's failure to produce her tax returns in view of her ongoing attempt to secure them from the IRS. This error is of little concern to us for it played no part in the ALJ's decision nor does it in ours. However, we are dissatisfied with the inadequate factual record established on the broader issue of the applicant's financial stability, integrity and responsibility.

For purposes of clarity, we shall restate the issues raised by this application for licensure:

(1) Does the applicant's 1983 conviction

on two counts of theft in violation of N.J.S.A. 2C:20-9 disqualify her for licensure as a casino key employee pursuant to N.J.S.A. 5:12-86(c)(1) or, in the alternative, N.J.S.A. 5:12-86(c)(4)?

(2) Does the applicant possess the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2)?

(3) Does the applicant possess the financial stability, integrity and responsibility required by N.J.S.A. 5:12-89(b)(1)?

FACTS

Donna Davis is a 29-year-old single woman who maintains her own apartment which she shares with her seven-year-old daughter. She is active in her church and has been a Sunday school teacher for the past 12 years and a superintendent of the Sunday school for the last three years. T77 to T79.[4] She was licensed as a casino employee in 1980 and began working at the Brighton (now Sands) as a soft count clerk in the same year. She remained so employed there for four and a half years. For a period of time ending in August 1982, she simultaneously held another job with the Atlantic County Welfare Board where she worked as an income maintenance technician. Her duties involved the determination of eligibility of welfare recipients. T80; T82 to T83. Ms.

4. T refers to transcript of proceedings in the OAL on July 9, 1985.

Davis was suspended from her job at the welfare board when she was charged by her supervisor with theft. T101. Though the transcript does not reveal an abundance of facts concerning the circumstances surrounding the alleged thefts, it appears that on two separate occasions in 1982 the applicant had advised certain welfare clients that they had received payments in excess of the benefits due. The clients brought the overpaid sums to the welfare office in envelopes which were given to the applicant. Thereafter, her supervisor discovered that the money was missing and swore out a complaint for Ms. Davis's arrest. T83 to T84; T90 to T95.

The applicant was subsequently indicted on two counts of fourth degree theft by failure to make required disposition; one count involved the sum of $273 and the other $373. On February 14, 1983, Davis pled guilty to both counts. On March 4, 1983, she was sentenced to three years probation, fined $500, required to make restitution in the amount of $646 and required to pay $50 to the Violent Crimes Compensation Board. R-2 in evidence. Upon satisfaction of all its terms, her probation was terminated early, in December 1984.

Davis never told anyone at the Sands about her conviction. T87. In February 1984 her supervisor, Harry DeMaria, who was then Assistant Casino Controller at the Sands, asked the applicant if she desired to move into a

supervisory position and advised that, if so, she would have to obtain a key employee license. Approximately two months later Davis acquired a temporary key license and was promoted to the position of count room supervisor. T47. At the hearing DeMaria testified that he promoted Davis on the basis of his own observations of her work and on the recommendations of Davis's immediate supervisors. T51 to 52. He also indicated on direct examination by the applicant's attorney that he would have no problem hiring her as a count room supervisor at his present place of employment (Atlantis) if she held a casino key employee license. T55. However, when on cross-examination he was first informed of Davis's conviction, DeMaria candidly acknowledged that he would probably not have considered her for a key license had he had that information at the time, although he probably would have kept her on staff. T58 to 61; T64.

Ms. Davis disclosed her conviction on her application for a casino key employee license. The Division opposed the renewal of her temporary license[5] in January 1985 and, as a

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5. Pursuant to N.J.S.A. 5:12-89(e), temporary casino key employee licenses may be issued for a period of six months and thereafter renewed for one additional three month period.

result, the applicant was terminated from her position with the Sands. T82.

The applicant's mother testified that she was certain her daughter had not committed the theft offense, her plea of guilty notwithstanding. T35; T37. The applicant also denied taking the money and suggested she was "flim flammed" by her welfare clients. T85; T92. However, she acknowledged that she was "responsible" by reason of her position with the welfare board. T86.

We note here that the applicant's claim of innocence cannot be accepted. In this administrative matter, she is precluded from relitigating the facts upon which her previously adjudicated judgment of conviction was based. See Matter of Tanelli, 194 N.J.Super. 492, 498 (1984). In any event, the administrative law judge did not believe the applicant's claim of innocence. Indeed he expressly found that the applicant "...voluntarily pled guilty to two counts of theft from her employer because she was guilty." A-3. We agree with this and each of the other eight factual findings enumerated in the initial decision.

As noted above, the evidence bearing on the issue of financial stability, integrity and responsibility is quite sparse. Nowhere in the transcript is there a specific delineation of the nature or amounts of Ms. Davis's past or present indebtedness. Such a listing appears in the

letter-report, but that is not evidence. The applicant's mother alluded to the fact that her daughter had become "overextended" during the period the applicant lived at her mother's house, which was until 1982. T37 to 38; T80. The applicant's mother further testified that Ms. Davis has no "new" debts but does have some "old" debts. However, when asked about the status of the old debts she stated she had "no idea." T39-20. The applicant too acknowledged that she had been in debt in the past but has since satisfied "most of them." T76-22.

As previously noted, we make no findings on the issue of the applicant's financial stability, integrity and stability.

DISCUSSION; SECTION 86 DISQUALIFICATION

The Legislature has determined that the casino gaming industry and those who wish to participate in it, must be strictly regulated. See In Re Martin 90 N.J. 295, 319 (1982); Knight v. Margate 86 N.J. 374, 381-382 (1981); In Re Boardwalk Regency Application, 180 N.J. Super. 324, 339-342 (1981), mod. on other grounds, 90 N.J. 361 (1982), app. dism. 103 S.Ct. 562 (1982). The Casino Control Act contains extensive, detailed regulation of virtually every aspect of the industry. See Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 169 (1982).

The licensing criteria for a casino key employee applicant are set forth in section 89 of the Act. Section 89(d) provides that the Commission shall deny the casino key employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of the Act. The pivotal question in this case is whether the applicant's conviction on two counts of theft by failure to make proper disposition warrants her disqualification under any of the provisions of section 86(c) of the Act.

The Division's theory was that the aggregate of the sums involved in the two counts exceeded $500, thus the offense should be deemed a third degree theft offense and a statutory disqualifer under subsection 86(c)(1). The ALJ rejected this argument and so ruled from the bench at the conclusion of the case. T107; Init. dec. at 4. We agree. Although one may conceive of circumstances where the Division's aggregate theory might be valid, this is not the case.

N.J.S.A. 2C:20-2(b)(4) provides:

> The amount involved in a theft shall be determined by the trier of fact. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

In rejecting the Division's aggregation theory, the ALJ observed that the applicant's "pleas were to fourth degree

offenses." Thus, the judge indicated he was not going beyond the criminal court's treatment of the matter. It could be argued that the Division should have the opportunity to prove that, notwithstanding the fact that the State did not criminally prosecute the offense as a third degree crime, the Division is nevertheless free to do so here under section 86(g). However, assuming arguendo that this is so, the record provides us with insufficient evidence to conclude that the crimes were committed pursuant to a common scheme or course of conduct. There is little evidence concerning the circumstances surrounding the offenses. For example, we do not know the precise dates on which the offenses occurred. The indictment (R-2 in evidence) recites that the offense described in Count I occurred between July 8 and July 19, 1982; Count II indicates that the second theft occurred on or about August 2, 1982. There is no explicit testimony or other evidence addressing this subject further.[6] Given the state of the record, we are disinclined to reach a conclusion that aggregation of stolen amounts is appropriate, especially in

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6. Prior to the taking of any testimony, the ALJ asked the DAG if he intended to introduce evidence that this is a statutory disqualifier. The DAG replied in the negative but thereafter stated he would supply "legal argument." T15-24 to T16-2.

view of the manner in which these offenses were treated by the prosecuting authorities.

Having concluded that section 86(c)(1) provides no basis for the applicant's disqualification, the question becomes whether the offenses in question are disqualifying offenses under subsection 86(c)(4) of the Act. The proper treatment of this issue so often raised (and frequently misapplied) in both application and violation cases, is one which needs to be clarified. The fact that it is raised in the context of an application for a casino key employee license brings into sharp focus the interplay between the concepts of inimical offenses and rehabilitation.

Section 86 provides in pertinent part:

> The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> ....
>
> c. The conviction of the applicant ...of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:
>
> ....
>
> (4) any other offense which indicates that licensure of the applicant would be inimical to the policy of this Act and to casino operations;
>
> ....

The accepted analytical approach to subsection 86(c)(4) is that which was first set forth in Resorts supra, at 15:

> Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

Under this interpretation, broad discretion is vested in the Commission to determine whether a given offense should result in disqualification. Rehabilitation under section 90(h) (casino employee license) and section 91(d) (casino hotel employee registration) does not apply to disqualifying convictions under section 86(c)(4). By their express terms, these rehabilitiation provisions apply only to "...a conviction of any of the offenses enumerated in this act as disqualification criteria." Nevertheless, many of the factors that are considered upon a claim of

rehabilitation are included within the inimical analysis. For example, the enumerated factors in section 90(h) which apply to casino employee license applicants, are:

> (1) The nature and duties of the position applied for;
>
> (2) The nature and seriousness of the offense;
>
> (3) The circumstances under which the offense occurred;
>
> (4) The date of the offense;
>
> (5) The age of the applicant when the offense was committed;
>
> (6) Whether the offense was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense;
>
> (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

The similarities are obvious and although the "nature and duties of the position" factor is not expressly identified in Resorts, it is embraced within the phrase "integrity of the regulatory process," for the process itself differs depending upon the license sought. That is, the process is most strict for key employees, less so, but still stringent, for casino employees and least of all for casino hotel employee registrants. Similarly, while

Resorts, makes no mention of the specific indicia of rehabilitation comparable to those listed in section 90(h)(1) through (8), these and other factors are encompassed in the more general phrase "the offender's conduct since the offense to the present...."

Thus, it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis. Moreover, in State v. Brian Worthy, Docket No. 84-112 (Commission order June 14, 1985), we adopted then ALJ (now Commissioner) Armstrong's observation that the inimical analysis is substantially similar to the concept of rehabilitation.

The salient point to be made here is that we consider rehabilitation factors before concluding that the offense in question is or is not inimical under section 86(c)(4). Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to section 86(c)(4).[7]

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7. In several prior cases involving casino and casino hotel employees, the Commission itself has not followed this principle. See e.g., In the Matter of the Application of James Carty for a Casino Employee
(Footnote Continued)

Turning to the facts of the instant case, we first observe that the offenses of which the applicant stands convicted are most serious. As the ALJ noted at p. 4 of the initial decision, N.J.S.A. 2C:20-9 is the recodification of the prior embezzlement statute. We agree with the ALJ's sentiment that placing a convicted embezzler in a casino count room could well undermine public confidence in the regulatory process. We fail to perceive any mitigating factors in the circumstances surrounding the offense. A plausible inference that we may and do draw from the facts presented is that the thefts were occasioned by greed or, at best, the desire to alleviate personal indebtedness. The offenses occurred in July and August 1982, just over three years ago. In the interim, the applicant has been released from probation early, having satisfied all the terms imposed by the court, including complete restitution to the Atlantic County Welfare Board. From the testimony and affidavits

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(Footnote Continued)
License and In the Matter of the Application of James F. Crown for a Casino Employee License, Docket Nos. 81-EA-405 and 82-EA-14 (Commission decision May 31, 1984, In the Matter of Carroll A. Johnson for Licensure as a Casino Hotel Employee, Docket No. 79-EA-133 (Chairman decision June 2, 1980). In these and other cases, we considered rehabilitation pursuant to either section 90(h) or 91(d) after concluding that the applicants had committed offenses which rendered their licensure inimical. However, the analytical approach used in these and similar cases is hereby disavowed.

adduced on the applicant's behalf, it appears that her job performance in the casino industry both before and since the theft incident was entirely satisfactory. Nevertheless, these factors are not sufficiently favorable in our judgment to overcome the negative impact of the relatively recent offenses upon the applicant's fitness to obtain a casino key employee license. Any possible doubts are surely overcome by the ALJ's assessment of the applicant's credibility concerning her attempts to explain away her conviction. The judge, who was in a superior position to make the determination, found that she had lied at the hearing. Therefore, having applied the appropriate factors including rehabilitation criteria, we find the applicant disqualified by reason of an offense which renders her licensure as a casino key employee inimical to the policies of the Act pursuant to section 86(c)(4).

AFFIRMATIVE QUALIFYING CRITERIA

The ALJ found that the applicant produced "no believable evidence on the issue of her reputation for good character, honesty and integrity or on the issue of her financial stability, integrity and responsibility." Init. dec. at 4. While we find this assessment somewhat overstated as it pertains to the good character issue, we agree that the applicant has failed to carry her burden of

proving by clear and convincing evidence that she possesses this qualification.

The financial stability, integrity and responsibility issue is another matter. There was no evidence presented concerning the applicant's prior indebtedness, or more importantly, her present financial status. The only recitation of the applicant's debts that appears in this record is in the DGE's letter-report.[8] As we noted, however, the letter-report is a pleading. It contains mere allegations, not evidence. Given the status of the record, we cannot resolve this issue. But in light of our determination on the good character and disqualification issues, it is of no consequence.

For the reasons set forth herein, we find that the applicant's conviction on February 14, 1983, for two counts of theft by failure to make the required disposition of sums $273 and $373, both fourth degree offenses, in violation of N.J.S.A. 2C:20-9, are inimical offenses under section 86(c)(4). The applicant is therefore disqualified for a casino key employee license. Further, the applicant has

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8. The PHDF-1 submitted by the applicant includes additional information that would be relevant to this issue. Unfortunately, the PHDF was not offered into evidence, thus we cannot consider it in resolving this case.

failed to demonstrate her good character, honesty and integrity pursuant to section 89(b)(2). Accordingly, the application of Donna Davis for licensure as a casino key employee is denied.

BY: _____
Walter N. Read, Chairman

_____
E. Kenneth Burdge, Vice Chairman

_____
Carl Zeitz, Commissioner

_____
Joel R. Jacobson, Commissioner

_____
Valerie H. Armstrong, Commissioner

DATE: Dec. 27, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 82-31
OAL DOCKET NO. CCC 4728-84
REGISTRATION NO. 45749-40
LICENSE NO. 22930-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

JOCELYN EARLE,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission, having considered the entire record of these proceedings at its public meeting of March 20, 1985,

IT IS on this 23rd day of September 1985, ORDERED that the initial decision is modified as follows:

1. Ms. Earle's conduct on August 7 and 8, 1981, which constituted cheating at the game of blackjack while employed as a dealer at the Playboy Hotel and Casino in violation of N.J.S.A. 5:12-113, constitutes a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(4) and (g); and

IT IS FURTHER ORDERED that the respondent is disqualified substantially for the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that the casino employee license of Jocelyn Earle is revoked based upon the reasons stated in the initial decision as modified;

IT IS FURTHER ORDERED that, in recognition of the significant efforts toward rehabilitation to date, the disqualification of Ms. Earle is waived pursuant to N.J.S.A. 5:12-91(e), permitting her to retain her casino hotel employee registration; and

IT IS FURTHER ORDERED that Jocelyn Earle is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act other than a casino hotel employee registration except pursuant to the provisions of N.J.A.C. 19:48-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Jocelyn Earle, the Division of Gaming Enforcement, the Office of Administrative Law, and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

By: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4728-84
AGENCY DKT. NO. 82-31

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
JOCELYN EARLE,
Respondent.

Anthony V. D'Elia, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Jocelyn Earle, respondent, pro se

Record Closed: December 17, 1984 Decided: January 28, 1985

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the amended complaint filed by the Division of Gaming Enforcement (Division), with the Casino Control Commission on May 7, 1984 seeking the revocation of the respondent's casino employee license and casino hotel employee registration, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Ms. Earle requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

New Jersey Is An Equal Opportunity Employer

At the prehearing conference held on August 14, 1984, the parties agreed that the issues in this matter are:

(a) Whether the respondent is disqualified from licensure and/or registration as a result of certain alleged criminal activities, pursuant to the provisions of N.J.S.A. 5:12-86g.

(b) Whether the respondent's alleged criminal activities makes her continued licensure and/or registration inimical to the policies of the Casino Control Act, pursuant to the provisions of N.J.S.A. 5:12-86c4.

(c) Whether the respondent can establish that she has been rehabilitated as provided by N.J.S.A. 5:12-90h and 91d.

During the prehearing conference, Ms. Earle stated that she no longer has a casino employee license and that she was required to give up her license in order to participate in the pretrial intervention program. By letter dated August 17, 1984, Deputy Attorney General D'Elia advised me that Ms. Earle's casino employee license had expired and that the matter should be limited to the issues as they relate to Ms. Earle's casino hotel employee registration. At the hearing, Mr. D'Elia disputed Ms. Earle's representation that she was required to give up her casino employee license. I indicated that this matter would be limited to the respondent's casino hotel employee registration and that the circumstances under which Ms. Earle gave up or did not renew her license were not relevant to the issues now before me.

The hearing took place on November 20, 1984 and at that time I stated that I would keep the record open in order to give Ms. Earle the opportunity to file supplemental letters relating to her rehabilitation and good character. I received one such letter on December 10, 1984, and Deputy Attorney General D'Elia did not submit any comments regarding this letter within the time period provided. The record in this matter closed on December 15, 1984.

Based on the testimony and exhibits presented at the hearing, I **FIND** that the pertinent facts in this matter are not in dispute.

Prior to midnight on August 7, 1981, Charles J. Guenther, a surveillance supervisor employed by Playboy Casino and Hotel, from a position on the catwalk above the casino floor, watched Ms. Earle deal cards at Blackjack Table No. A-1-03. Mr. Guenther was watching Ms. Earle since her name was on the list containing the names of employees suspected of cheating. Mr. Guenther observed Ms. Earle peek at the face of certain cards prior to offering said cards to the players sitting at positions 1 and 2 at her table. Ms. Earle would bend the corner of the card to determine what was its value as she took it out of the rack and then she would decide for these two players whether or not they wanted the card. The two players appeared to be cooperating with Ms. Earle by giving indefinite hand signals as to whether or not they wanted another card. After observing Ms. Earle for awhile, Mr. Guenther concluded that Ms. Earle was cheating and notified the Division.

Thereafter Detective Bruce Hull, a State Policeman on temporary assignment to the Division and another representative of the Division arrived at the casino. Mr. Hull reviewed the videotape of the activities at Ms. Earle's table which had been observed by Mr. Guenther and after midnight, Mr. Hull went on the catwalk and personally observed Ms. Earle while she was dealing cards. Mr. Hull observed that at certain times Ms. Earle would sneak a look at the face of a card prior to offering that card to the persons sitting at positions 1 and 2, and that these players allowed Ms. Earle to play the game for them. Mr. Hull concluded that Ms. Earle was cheating and that the persons sitting at positions 1 and 2 were winning more frequently than average.

Mr. Hull, early in the morning on August 8, 1981, arrested Ms. Earle as well as the two players sitting at positions 1 and 2 at her table. After viewing the videotape of her activities and having the Miranda Warning read to her, Ms. Earle admitted that she had been cheating but denied that she knew the two players who benefited by her actions.

Ms. Earle was indicted for swindling and cheating at casino gaming - fourth degree, a violation of N.J.S.A. 5:12-113(a) (P-2) and was accepted into the pretrial intervention program on July 28, 1982 (P-3). As part of this program, Ms. Earle was required to perform 75 hours of community service work for the Salvation Army in Atlantic City. Ms. Earle successfully completed the program and the indictment against her was dismissed (P-3).

At the hearing, Ms. Earle admitted that on August 7-8, 1981 she cheated on behalf of the players seated at positions 1 and 2 but denied that she knew them or had an arrangement with them to get a share of their winnings. Ms. Earle stated that these two players had played blackjack at her table on at least one other occasion and had placed toke bets for her as the dealer and had given her tips.

According to Ms. Earle, she was instructed by her supervisors to be helpful to the players. Ms. Earle would sometimes count cards and offer suggestions to persons at her table as to how they should play a game, and implied that she may have also peeked at cards to help other players (Transcript, p. 104-5). Ms. Earle stated that her cheating was like a "little white lie" or a "little prank" (Transcript, p. 106), and that the only economic benefits to her were the tips and toke bets placed for her by the players she helped. Ms. Earle denied that she had cheated for money and alleged that she would realize only a small amount since the tips given to her at the casino table had to be shared with the other blackjack dealers.

Ms. Earle stated that she was 24 years old at the time of the August 7-8, 1981 incident and that she had no prior criminal record. Ms. Earle was ashamed and upset as a result of her arrest and its aftermath and stated that it has had a substantial effect on her life.

After the August 7-8, 1981 incident, Ms. Earle went back to college and received a Bachelor of Arts Degree from Stockton State College on May 23, 1982 (R-1). A substitute teacher's certificate was issued to her on February 19, 1982 (P-3). Also Ms. Earle has completed a ticket agent training program offered by U.S. Air (R-4).

Since the incident, Ms. Earle has worked as a substitute teacher in the Atlantic City area, as a Round Card Girl during boxing matches at several casinos (R-2), as a model and actress, as a interviewer for the Division of Employment Services, State Department of Labor between May 21, 1984 and June 29, 1984 (R-5), and as a lifeguard for Resorts Casino and Hotel (R-7). Ms. Earle was politically active during the last mayoral race in Atlantic City (R-8) and was selected as an Outstanding Young Woman of America for 1984 (R-6).

On her own behalf, Ms. Earle argued that her casino hotel employee registration should not be revoked because of her one mistake. Ms. Earle stated that it is her goal to have a career in the theater arts she wants to be able to work in the casinos since such employment gives her the opportunity to meet people who might further her career. In the past, Ms. Earle has gotten jobs as a model and as an actress on TV through people she meets while working in a casino.

Mr. D'Elia argued that Ms. Earle's actions on August 7, 1981 clearly render her continued registration inimical to the policies of the Casino Control Act and that her registration should be revoked.

Having heard the testimony of the witnesses, I **FIND** that the Division has not shown that Ms. Earle personally know the two players for whom she cheated or that she had an arrangement with them to share in their winnings. Also, I **FIND** that there has been no showing as to the amount won by the two players as a result of Ms. Earle's actions.

Therefore, I **CONCLUDE** that the Division has shown that the respondent's actions on August 7-8, 1981 were unlawful and a violation pursuant to N.J.S.A. 5:12-113. Since N.J.S.A. 5:12-113 is not one of the offenses listed in N.J.S.A. 5:12-86c, I **CONCLUDE** that the Division has not shown a statutory disqualifier pursuant to the provisions of N.J.S.A. 5:12-86g. Also, I **CONCLUDE** that the Division has shown that Ms. Earle's activities on August 7-8, 1981, as well as her admission that this was not the first time she cheated for the benefit of players at her table, renders her continued registration inimical to the policies of the Casino Control Act.

Although Ms. Earle has shown a remorse about her cheating activities, and has shown that she went back and completed her college education and has been employed in various positions since her arrest, I am not persuaded that she has demonstrated the degree of rehabilitation which would warrant her continued registration pursuant to N.J.S.A. 5:12-91d.

Therefore, I **CONCLUDE** that the casino hotel employee registration of Jocelyn Earle be **REVOKED** and I **ORDER** that the matter be **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 28, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

January 30, 1985
DATE

Mary Ann Trocyk
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 0 1 1985
DATE

Ronald L. Parker /phc
OFFICE OF ADMINISTRATIVE LAW

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APPENIX

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Marked for identification only

P-2 Indictment filed against Jocelyn Earle

P-3 Dismissal of indictment filed against Jocelyn Earle after successful participation in the pretrial intervention program

P-4 Composite videotape of activities at Blackjack Table A-1-03 on August 7- 8, 1981

P-5 Personal History Disclosure Form - 4 submitted by Jocelyn Earle

FOR THE RESPONDENT:

R-1 Bachelor of Arts Degree Diploma awarded to Jocelyn Earle by the Stockton State College on May 23, 1982

R-2 Pay stub of a check in the amount of $50 for working as a Round Girl on January 25, 1983

R-3 Atlantic County Substitute Teacher's Certificate issued to Jocelyn Earle on February 19, 1982 and the transcript of Ms. Earle's college courses and grades at Stockton State College

R-4 Certificate of Training issued by U.S. Air to Jocelyn Earle

R-5 Letter from William Norcross regarding Jocelyn Earle, dated June 29, 1984

R-6 Letter from Margaret Long Arnold to Jocelyn Earle

R-7 Newspaper article appearing in the Atlantic Press on July 21, 1983

R-8 Letter from Gene Dorn, dated December 3, 1984 (received by mail after the hearing)

WITNESSES

FOR THE PETITIONER:
Charles J. Guenther
Bruce Hull

FOR THE RESPONDENT:
Jocelyn Earle

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE APPLICATION OF GALAXY AIRLINES FOR AN EXEMPTION FROM CASINO SERVICE INDUSTRY LICENSURE PURSUANT TO N.J.S.A. 5:12-92(c)	ORDER

This matter having been opened to the Commission upon the application of Galaxy Airlines for an exemption from licensure as a casino service industry pursuant to N.J.S.A. 5:12-92(c); and the Commission having considered all of the submissions of the parties and the arguments of all counsel concerned; and the Commission having determined that Galaxy Airlines is a casino service industry pursuant to N.J.S.A. 5:12-12 and 92; and the Commission having determined that Galaxy Airlines has failed to demonstrate the existence of the criteria for exemption from licensure as a casino service industry pursuant to N.J.S.A. 5:12-92(c); and the Commission having determined that Galaxy Airlines must file a casino service industry license application,

IT IS on this 30th day of MAY, 1985 ORDERED that the applicant, Galaxy Airlines, file a casino service industry license application pursuant to N.J.S.A. 5:12-92(c).

NEW JERSEY CASINO CONTROL COMMISSION
Walter N. Read, Chairman

By: Christopher D. Storcella
Christopher D. Storcella
Director, License Division

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE APPLICATION OF GALAXY AIRLINES, INC. FOR EXEMPTION FROM LICENSURE AS A CASINO SERVICE INDUSTRY	:	OPINION

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read, Chairman
E. Kenneth Burdge, Vice Chairman
Carl Zeitz, Commissioner
Joel R. Jacobson, Commissioner
Valerie H. Armstrong, Commissioner

APPEARANCES:

For Galaxy Airlines, Inc.:

F. Frederick Perone, Esquire

For the Division of Gaming Enforcement:

R. Lane Stebbins, Deputy Attorney General

For the Casino Control Commission:

Christine Piatek, Assistant Counsel

This matter comes before the Commission on the application of Galaxy Airlines for an exemption from licensure as a casino service industry pursuant to N.J.S.A.

5:12-92(c).[1] That provision of the Casino Control Act provides the Commission with the authority to grant an exemption from casino service industry licensure pursuant to N.J.S.A. 5:12-92(c) to any person or field of commerce that demonstrates:

> (1) That it is regulated by a public agency or that it will provide goods or services in insubstantial or insignificant amounts or quantities; and
>
> (2) That licensing is not deemed necessary in order to protect the public interest or to accomplish the policies established by this act.

An applicant seeking an exemption from licensure must satisfy both components of section 92(c) of the Act as enumerated above. Should the Commission determine that the

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[1]Galaxy Airlines, a scheduled airline carrier, provides charter air transportation services to Atlantic City on a contract basis with Atlantic City casino-hotels. Pursuant to federal regulations, the contract between Galaxy Airlines and each casino it serves is for the transportation of a "single entity" group for which the casino pays a flat fee. Galaxy Airlines was directed by the Commission staff to file a casino service industry license application on May 1, 1984, based on a determination that Galaxy Airlines transacted a level of business that was deemed to be regular or continuing pursuant to N.J.S.A. 5:12-92(c) and the Commission regulations, N.J.A.C. 19:43-1.2(c) and (d). During the 12 months of 1983, Galaxy Airlines transacted business in excess of $166,000 with two casino licensees. During the 12 months of 1984, Galaxy Airlines transacted business in excess of $200,000 with one casino licensee. In lieu of filing a casino service industry license application, Galaxy Airlines filed an application for exemption from casino service industry licensure, pursuant to N.J.S.A. 5:12-92(c), on October 17, 1984.

enterprise seeking an exemption is regulated by a public agency within the meaning of N.J.S.A. 5:12-92(c), it must also determine whether such regulation is sufficient to supplant casino service industry licensure and to protect the public interest and to further the policies of the Act.

In this regard, what the enterprise must establish is that the purposes behind regulation by that public agency are analogous to the purposes of regulation under the Casino Control Act.

The goal of regulation by the Commission is set forth at length in the policy findings of the Casino Control Act, N.J.S.A. 5:12-1(b). More specifically, N.J.S.A. 5:12-1(b)6 provides:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

The Act further provides that the regulatory and investigatory powers and duties of the State shall be fully exercised to exclude persons with known criminal records, habits or associations from casino operations or the ancillary industries regulated under the Act. See, N.J.S.A. 5:12-1(b)7 and 9.

Thus, the goal of regulation by the Commission is to ensure the integrity, public trust and confidence in legalized gaming. The Commission scrutinizes the good character, honesty and integrity of the principal individuals of an enterprise engaged in casino operations and the ancillary industries.[2] Regulation of a casino service industry by another public agency, then, must be comparable in purpose and intensity to regulation under the Act before the Commission will consider that such regulation is sufficient and that licensure by the Commission is unnecessary.

Galaxy Airlines contends that the federal regulation to which it is subject adequately addresses the regulatory concerns of the Commission. The applicant submits that the Federal Aviation Administration and the Civil Aeronautics Bureau (prior to its dismantlement in January 1985) regulate all aspects of the airline industry and that additional regulation is unwarranted.

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[2] N.J.A.C. 19:43-1.3(c) provides:

> Each applicant required to be licensed as a casino service industry in accordance with section 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its

(Footnote Continued)

We are not persuaded that such regulation has similar goals as does regulation by this Commission. The Federal Aviation Administration investigates and regulates airline carriers primarily with respect to safety concerns. Economic, financial and airline fitness concerns which were within the jurisdiction of the Civil Aeronautics Bureau are now regulated by the U.S. Department of Transportation. A fitness investigation is conducted by the Department of Transportation prior to the issuance of a "certificate of public convenience and necessity," which is the equivalent of licensure. While an applicant for licensure is required to submit detailed information with respect to the corporation and its key personnel, the scope of the investigation appears to concentrate on the corporation's economic stability rather than the good character, honesty and integrity of the principals of the corporation. See, 14 C.F.R. <204.5.[3]

(Footnote Continued)
reputation for good character, honesty and integrity. (Emphasis Added)

[3]The legal standard that has been applied by the CAB in determining whether an applicant for licensure has a satisfactory compliance disposition is found in Lone Star Airways, Inc. Fitness Investigation, Order 82-2-27 at 4:

> The threshold compliance issue is whether or not the applicant's compliance disposition is so poor as to prevent a finding of fitness. Disposition to comply with the Federal Aviation [sic] Act and with other applicable laws and

(Footnote Continued)

The applicant has presented substantial evidence of the regulation of the safety and economic aspects of the airline industry. Of course, we assert no jurisdiction over the regulation of rates, safety or the specific transportation services provided. However, the applicant has not established that the regulation to which it is subject meets the standard required under the Casino Control Act. That standard, as cited earlier, requires a showing of good character, honesty and integrity. Galaxy Airlines has not established that it is regulated by another public agency with concerns similar to that of the Casino Control Commission. For this very reason, regulation through the

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(Footnote Continued)

regulations is not necessarily impugned by any and all improper conduct in the past. The character and severity of violations, the circumstances under which they occurred, the ultimate disposition of any proceedings, and the subsequent passage of time without recurrence may all be relevant factors in assessing their significance. (Order 82-2-27 at 4), See also Application of Trans-Panama, S.A., Order 82-9-62. (Cited in Regent Airlines Fitness Investigation, Docket Number 40813, July 9, 1984, Civil Aeronautics Board, Initial Decision, pp. 125-126, which was withdrawn prior to consideration by the full CAB).

Thus, the key area of concern to the federal airline regulatory authorities is the ability of the applicant to comply with the Federal Aviation Act and other related laws and regulations. While regulatory compliance is a factor to be considered in judging character under the Casino Control Act, it is not a substitute for the character standard.

licensing process would be in the interest of the public and would further the policies of the Casino Control Act. This application must therefore be denied.

NEW JERSEY CASINO CONTROL COMMISSION

By: E. Kenneth Burdge
E. Kenneth Burdge, Vice Chairman

Carl Zeitz, Commissioner

Joel R. Jacobson, Commissioner

Valerie Armstrong, Commissioner

Dated: August 5 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-44
APP. NO. 49320-21
OAL DOCKET NO. CCC 2010-85

APPLICATION OF MARIE GIAMPORCARO

FOR A CASINO EMPLOYEE LICENSE — FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 11, 1985,

IT IS on this 20th day of September, 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Marie Giamporcaro, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2010-85

AGENCY DKT. NO. 85-EA-44

MARIE GIAMPORCARO,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Joanne Cocchiola, Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey, attorney) for respondent

Marie Giamporcaro, petitioner, pro se

Record Closed: July 8, 1985 Decided: July 26, 1985

BEFORE **EDGAR R. HOLMES**, ALJ:

Marie Giamporcaro applied for a casino employee license and the Division of Gaming Enforcement objected to her licensure by letter to the Casino Control Commission of January 7, 1985. The Division objected on the basis of her conviction for conspiracy to promote gambling and/or possession of gambling records pursuant to N.J.S.A. 2C:37-2 and 2C:5-2, which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86C(1).

New Jersey Is An Equal Opportunity Employer

The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 21, 1985, and the matter was set down for a plenary hearing on July 8, 1985, in the Municipal Court in Hammonton, New Jersey.

The Division offered evidence of the petitioner's indictment, conviction, and the sentencing judge's reasons for the imposition of sentence (R-1 and R-2 in evidence). Detective James Barber of the New Jersey State Police assigned to the Division of Gaming Enforcement offered testimony on the underlying facts supporting the conviction.

From the documents and oral testimony I **FIND** the following undisputed **FACTS:**

1. Salvatore Giamporcaro, a/k/a Sam, the petitioner's husband, was the target of a joint investigation by the New Jersey State Police and the Camden and Atlantic Counties' prosecutor's offices.

2. A wiretap was authorized on Salvatore Giamporcaro's home telephone.

3. The petitioner's voice was recorded on two occassions on the wiretap taking messages. Detective Barber had not had access to the transcripts of the wiretap and consequently did not know the content of the messages received by petitioner.

4. On October 8, 1982, armed with a search warrant, agents of the above-mentioned law enforcement agencies conducted a raid on Salvatore Giamporcaro's home and confiscated money, bets, telephone bills, phone books and other gambling-related paraphernalia. The petitioner was not at home during the raid. She voluntarily surrendered to the Hammonton Police when she learned that a warrant issued for her arrest.

5. The petitioner and others were indicted in Camden County in the September Stated Session, 1982 term, on Indictment NO. 613-82, the petitioner appearing in the first, twenty-fourth and twenty-fifth counts.

6. On February 14, 1983, the petitioner entered a retraxit plea of guilty to the first count of the indictment charging her with conspiracy to promote gambling and/or possession of gambling records.

7. On June 28, 1983, the petitioner was sentenced by the Honorable A. Donald Bigley, J.S.C., to a noncustodial sentence, which included probation for one year, a fine of $250.00,* and a VCCB penalty of $25.00. Counts 24 and 25 were dismissed pursuant to the plea bargain.

8. Judge Bigley in his statement of reasons for imposing the sentence gave the following rationale, which I set out in full as follows:

> This was a plea bargain agreement, which I accepted. The defendant was a wife of a co-defendant and it would appear that she had a very minimal involvement in this gambling crime. Therefore, I accepted the recommendation of the prosecutor for a noncustodial sentence. However, inasmuch as she was helping her husband, however reluctantly it may have been, I felt that a fine was the appropriate disposition along with a one year probationary term. The fine is to be paid over the period of her probation.

9. The petitioner duly reported her conviction on her application for a casino employee license.

N.J.S.A. 5:12-86(1) enumerates among the disqualification critera a conviction for conspiracy to commit the crime of promoting gambling and/or the possession of gambling records, both of which are third degree offenses.

I therefore **CONCLUDE** that the petitioner is disqualified from licensure as a casino employee pursuant to N.J.S.A. 5:12-90e unless she can affirmatively demonstrate her rehabilitation pursuant to N.J.S.A. 5:12-90h, together with her honesty, integrity and good character.

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* The original judgment of conviction was entered on March 30, 1983, and recited a fine in the amount of $2,500.00. This was corrected on March 30, 1983, to recite a fine in the amount of $250.00.

EVIDENCE OF REHABILITATION

Because casino operations include the promotion of gambling and the maintenance of gambling records, the petitioner's conviction was for a crime malum prohibitum rather than malum in se. But particular attention should be paid to whether or not the petitioner has any propensity for illegal gambling or would be accessible to persons with such propensities if licensed. This issue is clearly raised in the factors to be considered in determining whether the petitioner is rehabilitated in accordance with N.J.S.A. 5:12-90h, by the application of logic or plain common sense.

The petitioner has applied for the position of slot attendant, a position which, if the petitioner is determined to have a propensity for illegal gambling or is accessible to persons who have such a propensity, would make her licensure inimical to casino operations. N.J.S.A. 5:12-90h(1).

The petitioner offered five letters in evidence and gave oral testimony, none of which was rebutted. In addition she appeared to be truthful, genuinely sorry for her criminal involvement and anxious to reestablish her reputation for honesty, integrity and good character.

Based upon her written documents and her oral testimony, which I determine to be credible, I **FIND** the following additional facts:

10. The petitioner is a mature woman with four children, the youngest of whom is 19 years of age. From her application she appears to have been born in 1937 (N.J.S.A. 5:12-90h(5)).

11. This is the petitioner's first offense. She had minimal involvement (N.J.S.A. 5:12-90h(6)).

12. The offense is a serious one considering the position for which application was made (N.J.S.A. 5:12-90h(2)).

13. The petitioner at the time of the offense was involved in a deteriorating marriage. Her husband was 18 years older than she was and exercised dominion over her. She expressed this in terms of her cultural mileau.

He directed her to take messages on the telephone in his absence from the house. She did so on a few occasions. She did not appear to have any understanding of bookmaking argot (N.J.S.A. 5:12-90h(3)(7)).

14. Since the conviction, the petitioner and her husband have been divorced. Her only contact with him is when a situation arises involving their children. She is employed and has submitted reference letters from employers attesting to her honesty, integrity and good character.

I believe the petitioner is rehabilitated and will so conclude. She has been divorced from Salvatore Giamporcaro, who was a main actor in the bookmaking promotion, and she has no further dealing with him except as regards the children. But for his involvement, I do not believe she would have had any involvement in illegal bookmaking. Since this conviction, she has supported herself legally and honorably. The Camden County prosecutor plea bargained this matter for a noncustodial sentence. Judge Bigley, in his reasons for imposing a lenient sentence, refers to her "minimal involvement." Judge Bigley also writes that her assistance to her husband was "reluctant." I am unable to determine from the record before me whether this information came to Judge Bigley from the prosecutor or from the defense attorney in his statement at sentencing or from the defendant herself. Nevertheless, Judge Bigley believed it. The petitioner strikes me as a woman who has survived an unhappy marriage, who now seeks to enter the workforce in a decent paying position and whose rehabilitation is complete. I do not anticipate that any of her former associates including her husband will attempt to exercise any undue influence upon her in her capacity as a licensed casino employee. Because of the foregoing I am also satisfied the petitioner now possesses the requisite good character, honesty, and integrity for licensure.

I **CONCLUDE** that the petitioner has established by clear and convincing evidence her rehabilitation pursuant to N.J.S.A. 5:12-90h.

I **CONCLUDE** that the petitioner has established by clear and convincing evidence her good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2).

I **ORDER** that the application of Marie Giamporcaro for licensure as a casino employee be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 26, 1985
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

July 29, 1985
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 30, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

ij/ee

WITNESSES

Detective James Barber, for Division of Gaming Enforcement

Marie Giamporcaro, for petitioner

EXHIBITS INTO EVIDENCE

R-1 Indictment
Case management form
Judgment of Conviction, March 30, 1983
Statement of Reasons
Judgment of Conviction, June 28, 1983
Statement of Reasons
Certification
Binder Page

R-2 Certified copies conviction and corrected copy

P-1 Letter, Camden County Probation Officer

P-2 Letter, Attorney Iapalucci

P-3 Letter, K - Lee Dresses, Inc.

P-4 Letter, Autocan, Inc.

P-5 Letter, Florence Tanko

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-86
APPLICATION NO. 56105-21
OAL DOCKET NO. CCC 2636-85

APPLICATION OF VINCENT J. GIANNUZZI, JR., FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and exceptions to the initial decision having been filed by both parties; and the Commission having considered the entire record of these proceedings at its public meeting of September 24, 1985;

IT IS on this 18th day of OCTOBER 1985, ORDERED that the initial decision is modified as follows:

1. Despite its inclusion as an issue in the prehearing hearing order, the ALJ did not determine whether the applicant intentionally failed to disclose his criminal record contrary to N.J.S.A. 5:12-86(b). Upon review of the entire record, the Commission finds that the applicant intentionally failed to reveal his record and he is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86(b).

2. In addition to the evidence of lack of good character, honesty and integrity cited by the ALJ, the Commission finds that the applicant's intentional nondisclosure of his criminal record further evidences his failure to demonstrate that he possesses the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and 90(b).

3. Despite its inclusion as an issue in the prehearing order, the ALJ did not determine whether the applicant satisfied the business ability and experience requirements to be licensed as a dealer pursuant to N.J.S.A. 89(b)(3) and 90(b). Upon review of the entire record, the Commission finds that the applicant lacks the experience to be licensed as a dealer required by N.J.S.A. 5:12-89(b)(3) and 90(b).

IT IS FURTHER ORDERED that the application of Vincent J. Giannuzzi, Jr., for a casino employee license be denied based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Vincent J. Giannuzzi, Jr., is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Vincent J. Giannuzzi, Jr., the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within 10 days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2636-85

AGENCY DKT. NO. 85-EA-86

VINCENT J. GIANNUZZI, JR.,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Vincent J. Giannuzzi, Jr., petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 30, 1985 Decided: August 12, 1985

BEFORE **EDGAR R. HOLMES,** ALJ:

The petitioner applied for a casino employee license and the Division of Gaming Enforcement objected to his licensure on April 2, 1985, in a letter to the Casino Control Commission. One basis for the objection was the petitioner's failure to divulge his criminal arrest record. The petitioner requested a hearing by letter dated April 29, 1985, and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The prehearing conference was on July 1, 1985, and a plenary hearing was conducted on July 30, 1985 in Trenton.

The following facts are not in dispute and I therefore **FIND:**

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1. On June 17, 1980, petitioner was arrested in Jersey City and charged with "terroristic threats" and "possession of a weapon."

2. The June 17, 1980, arrest was disposed of in municipal court by a plea of guilty and a fine of $100.

3. On April 23, 1979, petitioner was arrested in New York City and charged with "assault on a police officer" and "criminal mischief."

4. The April 23, 1979, arrest was disposed of in municipal court by a plea of guilty and a fine of $50.

5. The petitioner has a third arrest which was dismissed and sealed and therefore he had no burden to divulge the same.

6. The petitioner purposefully failed to disclose two arrests to which he pled guilty on his casino employee license application because he was "afraid" that it would "hurt" him if he did.

7. The petitioner was interviewed by an investigator for the Division of Gaming Enforcement on December 20, 1984, and when asked if he had ever been arrested he continued to deny it.

8. Only after his arrest record was shown to petitioner by the investigator did he admit his police involvement.

9. Petitioner has a letter commending him from the Senior Citizens Assistance Project for whom he was a volunteer, and personal letters of recommendation from the President of the Greenwich Village Chamber of Commerce and from the Reverend Henry J. Sztuczko, F.D.P. of the Most Holy Crucifix Church in New York City.

10. The petitioner was a dealer in Las Vegas for approximately seven months in 1978.

The petitioner's burden in this matter is to prove by clear and convincing evidence his good character, honesty and integrity. Except for the letters introduced on his behalf, his testimony was unconvincing on this issue. He acknowledged that he has been unemployed for the past one and one-half year. He was unable to account for how he supported himself. He fumbled and looked nervous while answering this question. He said he was not eligible for unemployment. He said he did "odd jobs; paint and things like that." He said his family gave him money when he needed it; for taking care of the house he lives in with his father. He said he had not filed an income tax return in a few years. He said he does not "have a car or any bad habits."

Based upon the facts in evidence and the petitioner's demeanor, I **CONCLUDE** that petitioner has failed to prove by clear and convincing evidence the requisite good character, honesty and integrity for licensure as a casino employee.

I **ORDER** that petitioner's application for licensure as a casino employee be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 12, 1985
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

August 14, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 16, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

bc/ee

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EXHIBIT LIST

P-1	Sealed Record
P-2	For identification only - petitioner's fingerprint card returned to him
P-3	Letter from petitioner's lawyer
P-4	Letter from Henry J. Sztuczko
P-5	Letter from Chamber of Commerce
P-6	Letter from Senior Citizens Assistance Project

WITNESS LIST

For petitioner:

Vincent J. Giannuzzi, Jr.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-82
OAL DOCKET NO. CCC 2542-85
APPLICATION NO. 57091-21

APPLICATION OF PATRICIA GIBBS

FOR A CASINO EMPLOYEE LICENSE

ORDER OF REMAND

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 16, 1985,

IT IS on this 26th day of NOVEMBER 1985, ORDERED that the matter be remanded to the OAL for the following reasons:

> At P.3 of the initial decision the ALJ concluded that the Division of Gaming Enforcement (DGE) had proven by a preponderance of the evidence that the applicant had committed acts constituting the offense of theft by unlawful taking or disposition (third degree) contrary to N.J.S.A. 2C:20-3. The ALJ thereafter concluded that the applicant's licensure "...would be inimical to the Casino Control Act and Casino operations...." Though no statutory cite for the applicant's disqualification is included in the initial decision, it is readily apparent that the ALJ intended disqualification pursuant to section 86(c)(4) of the Act.
>
> While the Commission concurs with the finding that the applicant has committed a disqualifying offense, it disagrees with the statutory basis for disqualification suggested in the initial decision. Third degree theft, contrary to N.J.S.A. 2C:20-3, is an automatic disqualifying

offense listed in 86(c)(1). Because the applicant was not criminally prosecuted for this offense (the charges having been dismissed following her successful completed of a Pretrial Intervention Program), the statutory bases for her disqualification are sections 86(c)(1) and (g). However, whenever an applicant for a casino employee license is disqualified by reason of a conviction of a section 86(c)(1) offense or the commission of such an offense even absent a conviction, to which section 86(g) applies, such applicant shall be afforded the opportunity to demonstrate his or her rehabilitation from such disqualification pursuant to section 90(h) of the Act. The issue of rehabilitation was neither raised in the prehearing order or at the hearing nor addressed in the initial decision. The Commission therefore remands the matter for consideration of the issue of the applicant's rehabilitation.

In addition, noting the overlapping nature of the proofs relevant to issues of rehabilitation pursuant to section 90(h) and good character, honesty and integrity pursuant to sections 89(b)(2) and 90(b) (see In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 70-EA-113 (Commission decision April 22, 1980), this matter is remanded for possible reconsideration of the issue of the applicant's good character, honesty and integrity in the event the applicant adduces sufficient evidence of her rehabilitation.

IT IS FURTHER ORDERED that copies of this final order be served upon Patricia Gibbs, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2542-85
AGENCY DKT. NO. 85-EA-82

PATRICIA GIBBS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Frances L. Sundheim, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Patricia Gibbs, petitioner, pro se

Record Closed: August 20, 1985 Decided: August 29, 1985

BEFORE **EDGAR R. HOLMES,** ALJ:

Patricia Gibbs, petitioner, applied for a casino employee license and the Division of Gaming Enforcement objected to her licensure by letter to the Casino Control Commission of March 25, 1985. The basis of the objection was a theft charge filed in Egg Harbor City by a previous employer. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on July 1, 1985, and was set down for plenary hearing on August 20, 1985, in Atlantic City, New Jersey, at the Courthouse.

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The Division of Gaming Enforcement produced evidence that the petitioner had been charged with theft through the testimony of Detective Duane Daniels of the New Jersey State Police, who is currently assigned to the Division of Gaming Enforcement, and through the testimony of petitioner herself. The petitioner testified on her own behalf and also called her former supervisor at Hit or Miss Clothing, the employer who charged her with theft.

Based on all of the testimony, and documents in evidence I **FIND** the following **FACTS:**

1. Petitioner was employed as an assistant manager at Hit or Miss clothing store in Pleasantville, New Jersey, and was responsible for, among other things, making bank deposits.

2. Petitioner secreted merchandise from the store in the bank deposit bag and thus removed it from the store without being detected.

3. Petitioner also stole cash by voiding cash register receipts.

4. Because of its apparent problem with shrinking inventories, Hit or Miss clothing store contracted with the Nicolette Consulting Group, Ltd. to investigate.

5. Petitioner was interviewed on July 30, 1983 by a Nicolette representative and admitted committing thefts that totaled $1,000 over a period of time.

6. Petitioner's attorney negotiated pretrial intervention for her and she made restitution in the amount of $1,000; subsequently, the charges were dismissed.

The petitioner offered testimony on her own behalf together with the testimony of one Franca Pezza, who was her manager at the Hit or Miss clothing store. Their testimony went primarily to the voluntariness of petitioner's signed statement admitting the thefts, and to the amount in issue. Neither witness, however, disputed the underlying facts that resulted in petitioner's criminal charge, except to minimize to some extent the $1,000 estimate placed on the value of her thefts.

In order to show that the petitioner's purported confession was involuntary, petitioner and her witness offered the following example of the interviewer's interrogational technique: a fellow employee was so intimidated by the interrogator, that, having nothing to confess in the way of store thefts, she confessed to an adultery.

The issue of voluntariness is an issue cognizable in the criminal courts. Jackson v. Denno, 378 U.S. 368, 12 L. Ed. 2d, 908, 84 S. Ct. 1774, 1 A.L.R. 3d 1205 (1964). Save for the issue of credibility it is not cognizable in a civil proceeding. R. 63(7). Moreover, this statement was not obtained as a result of state action, and exclusion of the statement would have no substantial deterrent effect upon future unlawful police conduct. See, United States v. Janis, 428 U.S. 433, (1976). Petitioner does not contest the underlying facts in her admission, but relies solely on the voluntariness aspect as a defense. Except for the two letters of recommendation offered by petitioner, she utterly failed to address her good character, honesty and integrity.

I **CONCLUDE** that the Division has proved by a preponderance of the evidence that the petitioner committed acts which are proscribed by N.J.S.A. 2C:20-3, and I further **CONCLUDE** that the value of the thefts proscribed by N.J.S.A. 2C:20-3 are equivalent to a third degree offense in that they amounted to more than $500.

I **CONCLUDE** that licensure of the petitioner would be inimical to the Casino Control Act and Casino operations because her acts involved theft from an employer by an individual who enjoyed a position of trust; that trust was thoroughly violated. I further **CONCLUDE** that petitioner has failed to establish her good character, honesty and integrity by clear and convincing evidence.

I **ORDER** that petitioner's application for a casino employee license be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 29 1985
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8-30-85
DATE

Joe Lore
CASINO CONTROL COMMISSION

Mailed to Parties:

September 4, 1985
DATE

Ronald J. Parker/S.S.
OFFICE OF ADMINISTRATIVE LAW

bc

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WITNESSES

On behalf of the respondent:

Detective Duane Daniels

Patricia Gibbs

On behalf of the petitioner:

Franca Pezza

Patricia Gibbs

EXHIBITS

R1	Investigative Report form Egg Harbor Police Department, Interview Reportly Nicolette, written admission by petitioner.
P1	Letter, Zikos Economides
P2	Letter, L. Fichetala

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-195
OAL DOCKET NO. CCC 0321-85
APPLICATION NO. 44165-21

APPLICATION OF JOSEPH B. GLASSE
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE)

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 19, 1985,

IT IS on this 6th day of AUGUST 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons set forth in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Joseph B. Glasse, the Division of Gaming Enforcement, and the Office of Administrative Law.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0321-85

AGENCY DKT. NO. 84-EA-195

JOSEPH B. GLASSE,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Joseph B. Glasse, petitioner, pro se

Anthony V. D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: March 25, 1985 Decided: May 9, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Joseph B. Glasse, petitioner, for licensure by the Casino Control Commission (Commission) as a junket representative, sole owner/operator junket enterprise, pursuant to N.J.S.A. 5:12-102b. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that Mr. Glasse lacked the requisite good character, honesty and integrity, and was unable to establish that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency, concerning his purported business association with persons involved in illegal activities. N.J.S.A. 5:12-89b(2) and (3).

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PROCEDURAL HISTORY

Mr. Glasse submitted a Personal History Disclosure Form - 4 (PHDF-4), dated June 23, 1982, and a Personal History Disclosure Form - 2A (PHDF-2A), filed on January 15, 1983, to the Commission (J-1 and J-2). By letter dated November 16, 1984, the Commission advised the applicant that, based upon information received in a report from the Division, dated October 9, 1984, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. By letter filed on November 19, 1984, and an additional letter filed on January 4, 1985, Mr. Glasse requested a hearing. On January 19, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 19, 1985. The matter was heard on March 25, 1985, at which time the record closed.

FINDINGS OF FACT

Mr. Glasse is 47 years of age (J-2). He is a long time resident of the Commonwealth of Pennsylvania. Further, the applicant is a 1956 high school graduate, and a 1963 graduate of Temple University. He earned an honorable discharge from the United States Army Reserves.

From February 1965 to March 1967 the applicant was employed as a salesman by Scott Paper Company in Philadelphia (J-1).

From March 1967 to April 1980 the applicant was the president and a 50 percent owner of the Marilyn Travel Agency in Lansdowne, Pennsylvania (J-2). His former wife held the remaining 50 percent interest. The applicant and his wife were divorced in 1979.

Since April 1980 the applicant has been the president and secretary/treasurer, and the sole owner of the Joseph B. Glasse Travel Inc. agency in Media, Pennsylvania.

Since 1969 the applicant has conducted motor coach tours for individuals and groups. These tours included theater trips to New York City, vacation trips to various

locations in the United States among other things. The business grew from approximately one bus per month to 15,000 to 18,000 customers per year in 1976/77.

In either 1978 or 1979 the applicant conducted a weekend tour which included a stay at Resorts International Hotel, Inc. (Resorts). This was not a junket.

After learning of the profitability to other travel agents of casino-related business and upon learning of superbuses, which suited the applicant's needs as well as those of his clients, and considering casino-related business to be a logical extension of his then current business, in 1981 Mr. Glasse pursued such activities. More specifically, an employee of Mr. Glasse's contacted Harrah's Marina Casino Hotel concerning the possibility of junket operations and was given the name and telephone number for Alvin Skloff. Mr. Glasse had no prior knowledge of Mr. Skloff. Upon contacting Mr. Skloff, the applicant made arrangements for superbus trips to the Boardwalk Regency Casino (BRC). By application dated June 23, 1982, the applicant sought to be registered (J-1).

The applicant's specific operations consisted of his making contact with Mr. Skloff and scheduling a superbus, which would be arranged for by Mr. Skloff. The applicant would pay Mr. Skloff a $50 to $100 commission per bus, and would sell individual or group tickets and would also be responsible for the purchase of beverages and food. The applicant testified that customers on superbuses were not ordinary tour-patrons. On occasion, BRC would notify the the applicant that a bus was cancelled. On such occasions the applicant would provide a full refund and coupons for additional services.

The applicant testified that prior to December 1982 he believed Mr. Skloff was licensed by the Commission and was either a contractor for or an employee of BRC. These beliefs were based upon the fact that the applicant contacted Mr. Skloff through BRC, Mr. Skloff was able to sign BRC vouchers for lunches, Mr. Skloff handled any problems encountered by the applicant's customers at the BRC, the applicant knew Mr. Skloff to be a former musician from Philadelphia and he seemed nice. In fact, Detective Peter Scofide of the New Jersey State Police, who was called to testify by the applicant, stated that prior to 1983 Mr. Skloff held a registration from the Commission as a field agent. In addition, Det. Scofide testified that Mr. Skloff was always on the casino floor, was paged there by BRC staff, all travel agents contacted Mr. Skloff through the BRC, and Mr. Skloff was perceived by many travel agents as a BRC employee and any inquiries by travel agents to the BRC marketing staff were referred to Mr. Skloff.

In December 1982 Mr. Skloff advised the applicant that he needed to be licensed by the Commission. Accordingly and on January 13, 1983, the applicant filed his PHDF-2A with the Commission, by which he sought licensure as a junket representative (J-2). At that time the applicant anticipated an employment relationship with VIP Executive Tours (J-2).

As stated, the applicant had no prior knowledge of Mr. Skloff. Nevertheless, during the fall of 1982 the applicant, on one occasion, observed Mr. Skloff in the presence of another Philadelphia travel agent named Harry Goldstein, who the applicant perceived as having questionable business practices. Also, the applicant observed the wives of Messrs. Skloff and Goldstein together. As a result of these observations, the applicant became suspicious, i.e., he had a negative "gut feeling." However, the applicant had no knowledge of any specific conduct, either legal or illegal, of Mr. Skloff to support his feelings. Further, the applicant had no reason to believe that there was a business relationship between Messrs. Skloff and Goldstein. The applicant's observations were not sufficient to cause him to question his continuing business activities through Mr. Skloff.

In May 1983 Mr. Skloff ceased using VIP Executive Tours and switched to Atlantic Tour and Transit for motor coach services. Nevertheless, the applicant continued to receive the same buses as used by VIP Executive Tours and was in communication with the same people.

At this point it is necessary to inject the substance of the testimony of Det. Scofide. The detective is assigned to the Casino Intelligence Unit of the New Jersey State Police. In November 1982, the unit commenced an investigation into the superbus program at BRC, which had commenced in early 1980. It was apparent that Mr. Skloff had a relationship with the BRC concerning the operation of superbuses, which Mr. Skloff operated through Happy Day Tours and VIP Executive Tours. On or about March 1, 1983, 85 percent of BRC's superbus budget was transferred from VIP Executive Tours to Atlantic Tour and Transit, which was owned by Joseph Millman. Nevertheless, superbus activities were the same. More specifically, the same agents, buses, employees and operations continued. Thereafter, Atlantic Tour and Transit leased the majority of its superbuses from Casino City Coach Leasing, t/a American Sightseeing, which was one of approximately four superbus suppliers. As a result of the unit's investigation, it is contended that Mr. Skloff and others controlled the distribution of access to the BRC for superbuses and in the process received compensation from the bus companies, BRC and using travel agents.

On May 25, 1983, Det. Scofide interviewed Mr. Glasse, who readily acknowledged his business relationship with Mr. Skloff. During the interview, the detective advised the applicant that the purpose of the investigation concerned potential criminal activities with regard to superbus operations to BRC. The applicant then accepted a subpoena to testify before a New Jersey State Grand Jury.

On July 6, 1983, the applicant testified before the Grand Jury.

On July 12, 1983, and following a discussion between the applicant and Det. Scofide concerning the nature of junket operations, the applicant filed a request for position addition with the Commission, which sought to add the designation sole owner/operator junket enterprise (J-3 and J-4).

During August 1983 the applicant contacted Det. Scofide concerning a contact the applicant had received from Mr. Skloff about potential future operations of unrated bus trips to the BRC for a finder's fee of $250 per bus. Det. Scofide and another detective met the applicant on the applicant's boat, at which time the applicant permitted them to listen to a conversation between the applicant and Mr. Skloff regarding the proposal. The detective testified that Mr. Glasse cooperated with the State Police in every respect.

During the fall of 1983, the applicant began to deal directly with BRC for superbus operations. However, the extent of his trips diminished substantially.

During early July 1984, the applicant received a letter from the Commission together with copies of orders, which directed all operators of junket activities to cease operations with Mr. Skloff and others (P-6). The applicant complied with his directive. This was the first occasion on which the applicant was certain that it was improper to deal with Mr. Skloff.

On September 6, 1984, Messrs. Skloff, Millman, and others were indicted by a New Jersey State Grand Jury concerning alleged illegalities in the conduct of junket operations to BRC (R-1). The applicant was not named in the indictment.

Although the Division did not offer any rebuttal evidence to the applicant's affirmative presentation, it is essential to assess the applicant's credibility. Initially,

Mr. Glasse's position in this matter must be recognized. He is the applicant for licensure and, as such, has a direct interest in the outcome and a bias in these proceedings. However, it was clear both during the hearing and during the review of the record that from my observation of the applicant's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence as well as the testimony of Det. Scofide and my examination of the documentary evidence, that the applicant testified truthfully. The applicant's testimony was candid, consistent, believable, sincere and most persuasive. In the final analysis, I am persuaded to accept his testimony in all respects.

The applicant also offered letters concerning his good character, honesty and integrity, and his business ability, which letters were obtained in connection with Mr. Glasse's application to the Pennsylvania Department of Education for licensure of the Glasse Travel School. The letters from Michael R. Sweeney, Esq. (P-1), Harold J. Whartnaby, Vice-President of Fidelity Bank (P-2), Eugene M. Savell, CPA (P-3), Gerald F. Olmsted, Chief of Police of the Borough of Media (P-4), and Jane A. Stockdale, Educational Administration Associate for the Pennsylvania State Board of Private Business Schools (P-5), each attested to the applicant's good character, honesty and integrity as well as his business acumen.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

Under section 89b(2) of the Act, Mr. Glasse was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable

conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

Similarly, under section 89b(3), Mr. Glasse was required to establish, by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a junket representative, sole owner/operator junket enterprise.

The Division has raised issue with the applicant's qualifications under section 89b(2) and (3) by reason of the applicant's business association with Messrs. Skloff and Millman.

There was no evidence of any kind aside from the applicant's persuasive denial of any knowledge of Mr. Millman, that the applicant knew or was ever aware of Mr. Millman. Accordingly, there is no basis for the objection.

There was no dispute that the applicant had a business relationship with Mr. Skloff of approximately a two-year duration; however, it was abundantly evident that the nature of the relationship was purely business and was above-board in all respects. Further, there was absolutely no reason for Mr. Glasse to believe that Mr. Skloff was involved in any illegal activities. The applicant's assertion that he was suspicious of Mr. Skloff, emanated from his observation of Mr. Skloff with a Mr. Goldstein, of whom the applicant was suspicious, and not by reason of anything the applicant knew with regard to Mr. Skloff. In addition, the applicant had no specific knowledge of any illegal activities conducted of Mr. Goldstein. This "suspicion" was of no significance whatsoever. Further, the fact that the applicant had a business relationship with Mr. Skloff cannot, by any stretch of the imagination, be construed as reflecting negatively upon the applicant. More specifically, the applicant, as did many other travel agents, believed reasonably that Mr. Skloff was either a contractor with or an employee of BRC and was duly authorized and licensed to conduct business. In the absence of any reasonable indication, let alone a clear indication, of misconduct by Mr. Skloff, the applicant's business relationship and activities were above reproach.

It is abundantly clear that Mr. Glasse has established his qualifications for licensure. He has established that he enjoys a high reputation for good character, honesty and integrity within the community in which he lives and works. Also, he possesses sufficient business ability and casino experience, which is most significant, to establish the reasonable likelihood of success and efficiency as a licensee. The applicant's experience with the New Jersey gaming industry must be perceived as positive. An examination of the "whole man" clearly and convincingly establishes that Mr. Glasse is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corp. at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2), and that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency under section 89b(3).

DISPOSITION

It is **ORDERED** that the application of Joseph B. Glasse for licensure as a junket representative, sole owner/operator junket enterprise, be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 9, 1985
DATE

Richard L. Voliva Jr
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

May 10, 1985
DATE

Bernadette D. Fraga
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 14 1985
DATE

Ronald L. Parker/ph
OFFICE OF ADMINISTRATIVE LAW

bc

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

J-1 Personal History Disclosure Form - 4, Joseph B. Glasse, June 23, 1982 (10 pages)

J-2 Personal History Disclosure Form - 2A, Joseph B. Glasse, filed on January 13, 1983 (27 pages)

J-3 Request for position addition subsequent to licensure, Joseph B. Glasse, filed July 12, 1983 (11 pages)

J-4 Sole Owner/Operator Junket Enterprise Disclosure Form, Joseph B. Glasse, July 7, 1983 (12 pages)

P-1 Letter to Dr. Jane Stockdale from Michael R. Sweeney, October 26, 1984

P-2 Letter to Dr. Jane Stockdale from Harold J. Whartnaby, October 31, 1984

P-3 Letter from Eugene M. Savell, October 29, 1984

P-4 Letter from Gerald F. Olmsted, December 1, 1983

P-5 Letter to Joseph Glasse from Jane A. Stockdale, December 28, 1984

P-6 Letter to Joseph B. Glasse from Dennis Daly, July 9, 1984, with attachments (2 pages)

R-1 State of New Jersey v. Albert Corbo; Alvin Skloff; Joseph Millman, et als, Superior Court of New Jersey, Law Division - Criminal, Number SDJ122-84-3, Indictment, filed September 6, 1984 (222 pages)

EXHIBIT NOT OFFERED:

R-2Id. Transcript of sworn interview of Joseph B. Glasse conducted by the Division of Gaming Enforcement on August 20, 1984

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WITNESS LIST

FOR THE APPLICANT:

William Gery

Joseph B. Glasse

Peter Scofide

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-58
APPLICATION NO. 48683-21
OAL DOCKET NO. CCC 2187-85

APPLICATION OF MORRIS GOODMAN

FOR A CASINO EMPLOYEE LICENSE

(JUNKET REPRESENTATIVE)

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 16, 1985,

IT IS on this 10th day of December 1985, ORDERED that the initial decision is modified as follows:

> The portion of the initial decision that finds that the applicant's failure to disclose two arrests dating from 1965 as not disqualifying in that "neither deletion qualifies as a material fact pursuant to the Act." (Initial Decision at 5), is rejected. The criminal record of an applicant is "information...requested by the Commission" and therefore must be disclosed pursuant to section 86(b) of the Casino Control Act. Moreover, no finding of materiality is required for such undisclosed information. Further, criminal record information is always relevant in determining whether an applicant for a casino key or casino employee license has demonstrated by clear and convincing evidence his or her good character, honesty and integrity pursuant to sections 89 and 90 of the Act.

IT IS FURTHER ORDE[illegible]n is granted substantially for th[illegible]nitial decision, as modif[illegible] herein by reference and ma[illegible]

IT IS FURTh[illegible]f this final order be served upon Mor[illegible] Division of Gaming Enforcement and the Off[illegible]nistrative Law within ten (10) days of the date hereo[illegible]

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2187-85

AGENCY DKT. NO. 85-EA-58

MORRIS GOODMAN,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

Alfred R. Scerni, Jr., Esq., for petitioner (Wilson, Fusco & Scerni, attorneys)

Anthony V. D'Elia, Deputy Attorney General, for respondent, (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: August 23, 1985 Decided: September 9, 1985

BEFORE **STEPHEN W. THOMPSON,** ALJ:

STATEMENT OF THE CASE

Petitioner, Morris Goodman, seeks licensure as a casino employee permitting him to act as a junket representative. The Division of Gaming Enforcement (Division), Department of Law & Public Safety, opposes petitioner's application for casino licensure based upon allegations that petitioner failed to reveal facts material to qualification within the meaning of section 86b of the Casino Control Act (Act) as incorporated in section 90e. In addition, the Division contends that the petitioner does not possess the requisite good character, honesty and integrity for licensure within the meaning of sections 89b(2) and 90b of the Act, as incorporated in section 102.

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PROCEDURAL HISTORY

Petitioner filed a Personal History Disclosure Form-2A on August 31, 1983. On October 19, 1983, petitioner was issued a temporary license as a junket representative for the Claridge Hotel Casino. On February 1, 1985, the Division, by letter - report, objected to Mr. Goodman's licensure. Petitioner requested a hearing on April 1, 1985 and on April 15, 1985, the Casino Control Commission (Commission) transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was held on May 28, 1985, before Administrative Law Judge Joseph F. Fidler, and the matter was scheduled for hearing on July 30, 1985, before Administrative Law Judge Stephen W. Thompson. The hearing was adjourned at the request of petitioner's counsel and the matter was rescheduled for August 23, 1985. The hearing was conducted on August 23, 1985, at the Brigantine Municipal Building, Brigantine, New Jersey.

FINDINGS OF FACT

Mr. Goodman is 78 years of age and has resided in Baldwin, Nassau County, New York for the past 25 years. Prior to that, he was a resident of Florida for approximately 10 years. He has also resided in Brooklyn, New York. Petitioner was married to Dorothy Goodman for over 50 years and has two grown children.

On December 30, 1933, Mr. Goodman was arrested and charged with assault, third degree by the New York City Police Department. On May 23, 1934, petitioner's sentence was suspended. The arrest and conviction were disclosed on petitioner's Personal History Disclosure Form-2A.

The parties have stipulated that the alleged arrest on May 23, 1937, mentioned in the Division's objection letter never occurred. Since the arrest never occurred, petitioner was not required to list it on his Personal History Disclosure Form-2A.

On March 3, 1949, Mr. Goodman was arrested and charged with possession of gambling equipment by the Miami Beach Police Department. In April 1949, petitioner was found guilty and fined $500. The arrest and conviction were disclosed on petitioner's Personal History Disclosure Form-2A.

The parties have stipulated that the alleged arrest on January 20, 1950, mentioned in the Division's objection letter never occurred. Since the arrest never occurred, petitioner was not required to enter it on his Personal History Disclosure Form-2A.

On August 23, 1951, Mr. Goodman was arrested and charged with bookmaking by the Dade County, Florida, Sheriff's Department. This matter was dismissed. The arrest was disclosed on petitioner's Personal History Disclosure Form-2A.

On January 17, 1952, Mr. Goodman was arrested and charged with vagrancy by the Hialeah, Florida, Police Department. Petitioner was convicted and paid a fine of $105. The arrest and conviction were disclosed on petitioner's Personal History Disclosure Form-2A. Petitioner testified as to the underlying circumstances of this incident. While attending Hialeah Race Track, petitioner was invited to participate in a friendly craps game with employees of the track. Since petitioner had over $600 with him at the time, he felt the term "vagrant" was probably inappropriate.

On December 29, 1955, Mr. Goodman was arrested and charged with possession of gambling equipment by the Miami Beach Police Department. The matter was dismissed. This arrest was disclosed on petitioner's Personal History Disclosure Form-2A.

On November 29, 1961, Mr. Goodman was arrested and charged with bookmaking by the New York City Police Department. The matter was dismissed. Petitioner listed this arrest on his Personal History Disclosure Form-2A.

On December 3, 1961, Mr. Goodman was arrested and charged with bookmaking by the New York City Police Department. The matter was dismissed. This arrest was disclosed on petitioner's Personal History Disclosure Form-2A.

On April 9, 1965, Mr. Goodman was arrested and charged with bookmaking by the New York City Police Department. The matter was dismissed. This arrest was <u>not</u> disclosed on petitioner's Personal History Disclosure Form-2A. However, petitioner testified as to the underlying circumstances concerning the apparent failure to disclose. Mr. Goodman gathered the information needed to answer question 16 of the Personal History Disclosure Form by going to the New York City Police Department, Center Street, New York, and requesting a copy of his criminal record. A police officer

handwrote a copy of Mr. Goodman's criminal record and presented it to the petitioner. The 1965 arrest was not reflected on the handwritten copy and Mr. Goodman failed to remember the arrest because of its age.

Mr. Goodman emphasized that all gambling arrests were for personal betting only.

Sometime in 1965, Mr. Goodman received notice by mail from the Internal Revenue Service indicating that unpaid taxes of approximately $40,000 were due and owing. Mr. Goodman and his attorney challenged the claim and stated that the correct figure was approximately $8,000. Thereafter, another letter was sent to Mr. Goodman indicating that he would be tried for income tax evasion in Jacksonville, Florida. That trial ended in a mistrial. At the second trial in 1968, the Internal Revenue Service accepted the original $8,000 figure in full settlement of the claim. Mr. Goodman explained that he was neither required to nor did he post bail nor was he ever formally arrested. With the exception of the trial, all proceedings were conducted through the mail. Petitioner testified as to the reason this incident was not listed on his Personal History Disclosure Form-2A. An arrest to petitioner means "being booked and posting bail". Since this never occurred, petitioner to this date believes that he was never "arrested" for this offense.

Mr. Goodman started operating junkets to the Dunes Hotel and Country Club in Las Vegas, Nevada in 1966. Prior to 1966, he was a customer of "Big July" Weintraub on gambling junkets to the Dunes. His monthly junket trips are comprised of approximately 70-80 gamblers. Mr. Goodman has been continually licensed as a junket operator by the Nevada Gaming Board since 1966 and charges have never been filed against Mr. Goodman's license by the Board. On October 19, 1983, Mr. Goodman secured a temporary license as a junket representative for the Claridge Casino Hotel from the New Jersey Casino Control Commission. During his 18 months temporary licensure, no charges of impropriety were filed against Mr. Goodman. Mr. Goodman presented nine written character references from Rabbi Abraham I. Feldbin, Ralph Goldman, Alexander Berkowitz, Murray Schuss, William Ehrenzweig, Steve Appel, Herbert Dudak, Seymour Brown and Allen Friedman which are incorporated in the body of this initial decision (P-1 to P-8, P-10). In addition, petitioner introducted a certified statement from Edward J. Doughty, Commanding Officer, Records Bureau, Nassau County Police Department attesting that Mr. Goodman does not appear on any criminal record in Nassau County, New York (P-9).

All the preceding evidence is unrefuted and credible and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-90e

Under section 90e of the Act, which incorporates the provisions of 86b, Mr. Goodman was required to provide information, documentation and assurances required by the Act or requested by the Commission, and failure of the petitioner to reveal any fact material to qualification or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria may result in the denial of licensure.

It is admitted that Mr. Goodman failed to disclose the arrest of April 9, 1965, and the alleged "arrest" by the Internal Revenue Service in 1965 on his Personal History Disclosure Form-2A. However, I am persuaded by Mr. Goodman's credible testimony concerning these arrests that the deletion involving the April 9, 1965, arrest was inadvertent and that the alleged "arrest" by the Internal Revenue Service involves an interpretation of what constitutes an "arrest." In addition, I am persuaded that neither deletion qualifies as a material fact pursuant to the Act. The April 9, 1965, matter was dismissed and the Internal Revenue Service trial was settled on petitioner's original terms.

I **CONCLUDE** from the credible testimony presented that petitioner did disclose all facts material to his arrest record to the best of his knowledge and ability on his New Jersey Casino Control Commission Personal History Disclosure Form-2A.

(B) N.J.S.A. 5:12-89b(2)

Pursuant to sections 89b(2), 90b and 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license which would permit him to act as a junket representative must demonstrate by clear and convincing evidence, his reputation for good character, honesty and integrity. Pursuant to N.J.A.C. 19:49-2.1(c)1 and 2, a person acting as a junket representative must be licensed as a junket representative and must be employed by either licensed casino or a licensed junket enterprise, or must be personally licensed as a sole owner/operator junket enterprise.

I am persuaded by the credible testimony, the character references presented and petitioner's general demeanor that he possess the requisite good character, honesty and integrity for licensure.

I **CONCLUDE** that the petitioner has sustained his burden by establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Act, as incorporated in section 102 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Morris Goodman for a casino employee license, permitting him to act as a junket representative, be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9-3-85
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

September 5, 1985
DATE

Bernadette P. Friggeri
CASINO CONTROL COMMISSION

Mailed to Parties:

September 9, 1985
DATE

Ronald J. Parke /x.s.
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For Petitioner:

P-1 Statement of Alan Friedman

P-2 Statement of Seymour Brown

P-3 Statement of Herbert W. Dudak

P-4 Statement of Steve Appel

P-5 Statement of William Ehrenzweig

P-6 Statement of Murray Schuss

P-7 Statement of Alexander Berkowitz

P-8 Letter from Ralph Goldman, DVM

P-9 Certified letter from Edward J. Doughty

P-10 Letter from Abraham I. Feldbin

For Respondent:

J-1 Request For Admissions

J-2 Personal History Disclosure Form 2A

WITNESS

For Petitioner:

Morris Goodman

For respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-102
OAL DOCKET NO. CCC 2121-85

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
GREATE BAY HOTEL & CASINO, INC.,	
Respondent.	:

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision settlement by the Office of Administrative Law resolving the complaint by the Division of Gaming Enforcement against respondent; and the Commission having considered the entire record of these proceedings at its public meeting of August 14, 1985,

IT IS on this 23rd day of AUGUST 1985, ORDERED that the initial decision settlement is affirmed and incorporated herein by reference; and

IT IS FURTHER ORDERED that Greate Bay Hotel & Casino, Inc., pay a civil penalty in the amount of $35,000, as stipulated in the settlement, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that copies of this final order be served upon Greate Bay Hotel & Casino, Inc., the Office of Administrative Law and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 2121-85
AGENCY DKT. NO. 84-102

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GREATE BAY HOTEL AND CASINO, INC., T/A THE SANDS HOTEL AND CASINO OF ATLANTIC CITY,
Respondent.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Frederick H. Kraus, Esq., for respondent (Roberto Rivera-Soto, General Counsel)

Record Closed: June 17, 1985 Decided: June 20, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 4, 1984, which charges the respondent with violating sections 99 and 101 of the Casino Control Act (N.J.S.A. 5:12-1.1 et seq.) and N.J.A.C. 19:45-1.1, 1.11(d) and (g), and 1.25(b), (c) and (e).

An Equal Opportunity Employer

PROCEDURAL HISTORY

On June 18, 1984, and March 28, 1985, Casino Control Commissioner Joel R. Jacobson conducted prehearing conferences in this matter. On April 16, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held at the Office of Administrative Law on May 28, 1985. At that time, the parties informed the undersigned that they had determined that a mutually satisfactory resolution of the matters in controversy was possible, and they thereafter reached agreement on and consented to a settlement disposition. The terms of settlement have been expressly set forth in the attached Stipulation of Facts and Settlement Agreement. Having reviewed the entire record in this matter, I **FIND:**

1. The terms of settlement in this matter have been incorporated into an executed Stipulation of Facts and Settlement Agreement, which is attached to this initial decision and which is incorporated herein as if set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.A.C. 1:1-17.1, the parties to a contested case may settle a matter by consent and may express the settlement terms in an agreement of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an initial decision which sets forth the settlement terms.

Having found that the terms of settlement, as set forth in the attached Stipulation of Facts and Settlement Agreement, are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the settlement terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 20, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 21, 1985
DATE

Bernadette T. Fryer
CASINO CONTROL COMMISSION

Mailed to Parties:

June 25, 1985
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

WITNESSES

None

EXHIBITS

A Copy of William F. Kane's credit application file at the Sands Hotel and Casino, Atlantic City

B Microfilm reproductions of thirteen (13) counter checks negotiated by patron William F. Kane

C Copies of ten (10) International Trust Fund, LTD's Swiss Bank Corp. checks presented by patron William F. Kane, each in the amount of $10,000 and made payable to William F. Kane

D Copies of eleven (11) computer-printed Safekeeping Deposit Receipts and Redemption Vouchers pertaining to the Swiss Bank check transactions of patron William F. Kane

E Copy of two (2) page internal memorandum dated 2/8/83 from Pat DiGiacomo, Sands casino cage manager, to Bill Bagnell, Sands casino controller, regarding "William F. Kane - Swiss Bank Account Checks."

F Copy of one (1) page internal memorandum dated 7/28/83 from Jean DiMartino, Sands casino cage shift supervisor, to Patricia DiGiacomo, Sands casino case manager, regarding Mr. William F. Kane

G Copy of one (1) page internal memorandum dated 11/19/82 from Patricia DiGiacomo, Sands casino cage manager, to all cage cashiers regarding safekeeping deposits

IRWIN I. KIMMELMAN
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Attorney for Plaintiff
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CN-047
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By: KEVIN F. O'TOOLE
Deputy Attorney General
(609) 984-6159

ROBERTO RIVERA-SOTO, ESQ.
FREDERICK H. KRAUS, ESQ.
Attorneys for Respondent
Greate Bay Hotel and Casino, Inc.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 84-102

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Plaintiff, vs. GREATE BAY HOTEL AND CASINO, INC. t/a THE SANDS HOTEL AND CASINO OF ATLANTIC CITY, Respondent.	CIVIL ACTION STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and Roberto Rivera-Soto, Esquire, attorney for Respondent, Greate Bay Hotel and Casino, Inc., the following facts have been agreed upon and stipulated to as Findings of Fact.

1. Respondent, Greate Bay Hotel and Casino, Inc., t/a the Sands Hotel and Casino

(hereinafter referred to as "Greate Bay") is the holder of a Certificate of Operation effective August 13, 1980, at which time Greate Bay was the holder of a temporary casino permit and was trading as The Brighton Hotel and Casino. Greate Bay has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. On May 7, 1982, the Casino Control Commission (hereinafter referred to as "the Commission") issued Greate Bay a plenary casino license, which was last renewed on May 7, 1985.

2. On April 4, 1984, Plaintiff, Division of Gaming Enforcement (hereinafter referred to as "the Division"), filed the instant complaint against Greate Bay alleging violations of the Casino Control Act (P.L. 1977, c. 110), N.J.S.A. 5:12-1, et seq. (hereinafter called "the Act"), and the regulations promulgated thereunder by the Commission pertaining to the acceptance of checks from patron William F. Kane and the involvement of representatives of the Credit Department in the acceptance of said checks.

3. William F. Kane is a Pennsylvania resident who established credit accounts at seven (7)

Atlantic City casinos in 1982 as follows: a $5,000 credit line at Golden Nugget was granted on 1/28/82; a $5,000 credit line at Caesars was granted on 3/5/82; a $5,000 credit line at the Sands was granted on 3/6/82; a $5,000 credit line at the Tropicana was granted on 3/19/82; a $5,000 credit line at Bally's was granted on 3/31/82; a $10,000 credit line at the Claridge was granted on 9/11/82; and a $10,000 credit line at Resorts was granted on 10/9/82.

4. As of January 3, 1983, William F. Kane's credit account at the Sands Hotel and Casino had a credit limit of $10,000 and the outstanding balance on said credit account was $7,500. Attached hereto and incorporated herein and marked as Exhibit A is a true copy of William F. Kane's credit application file at the Sands.

5. Said outstanding balance of $7,500 pertaining to William F. Kane's credit account was evidenced by three (3) counter checks maintained in the check bank: (1) counter check #873, dated December 24, 1982, in the amount of $2,500; (2) counter check #10570, dated December 26, 1982, in the amount of $2,500; and (3) counter check #990, dated December

29, 1982, in the amount of $2,500. All three (3) outstanding counter checks were drawn upon account #6704014 at the Central Penn National Bank, Broad and Walnut Streets, Philadelphia, Pennsylvania. Attached hereto and incorporated herein and marked as Exhibits B-1, B-2, and B-3 are microfilm reproductions of said counter checks.

6. At approximately 1:27 a.m. on January 4, 1983 (gaming date January 3, 1983), patron William F. Kane approached the cashiers cage at the Sands and presented a $10,000 check to general cashier Sue Marraffa for the purpose of redeeming his outstanding counter checks in the amount of $7,500 and depositing as a safekeeping amount the remaining balance of $2,500.

7. The check presented by William F. Kane to casino cashier Sue Marraffa was drawn on an account entitled "International Trust Fund, Ltd." with the Swiss Bank Corp. whose address printed thereon stated 17 Geneva, Zurich, Switzerland. The check was drawn in the amount of $10,000, payable to William F. Kane, and signed by the maker with the name "John D. Rasco." The check was dated December 30, 1982 and it bore the identifying

number 252686-B. Attached hereto and incorporated herein and marked as Exhibit C-1 is a true copy of Swiss Bank Corp. check #252686-B presented by William F. Kane.

8. General cashier Sue Marraffa presented check #252686-B to swing shift supervisor, Jean DiMartino, for her examination and approval. According to a statement of Jean DiMartino (Exhibit F), she had never seen a "Swiss" check before and William F. Kane was a credit customer so she asked Sands credit executive Robert Snowden if he knew whether this check was a cash equivalent. Additionally, Greate Bay's policy at that time was to have the casino cage contact a credit executive for approval of all Cashier's Checks. Attached hereto and incorporated herein and marked as Exhibit G is a true copy of a memorandum dated November 19, 1982 from cage manager Patricia DiGiacomo to all cage cashiers regarding safekeeping deposits.

9. Sands credit executive Robert Snowden examined check #252686-B. According to the statement of Jean DiMartino, Mr. Snowden informed her that it was a "cashiers check"

and that he was told by Mr. Donald Wood, Director of Credit, that the check was okay to accept. Sands credit executive Robert Snowden placed his signature and license number in the upper right-hand corner of check #252686-B.

10. General cashier Sue Marraffa then processed check #252686-B for the purpose of redeeming William F. Kane's outstanding counter checks #873, #10570, and #990 and establishing a safekeeping deposit in the amount of $2,500. A computer printed "Redemption Voucher" and "Safekeeping Deposit Receipt" were prepared to evidence the transaction and said documents are attached hereto and incorporated herein and marked as Exhibit D-1.

11. Following the transaction described in paragraphs 6 through 10, patron William F. Kane negotiated two (2) counter checks at the baccarat pit on gaming date January 3, 1984: counter check #753 in the amount of $2,500 at 1:32 a.m. and counter check #754 in the amount of $5,000 at 1:43 a.m. Attached hereto and incorporated herein and marked as Exhibit B-4 and B-5 are microfilm reproductions of said counter checks.

12. At approximately 2:18 a.m. on January 4, 1983 (gaming date January 3, 1983), patron William F. Kane presented a second "Swiss" check to general cashier Sue Marraffa for the purpose of redeeming counter checks #753 and #754 and applying the remaining balance to his safekeeping deposit account.

13. The second "Swiss" check presented by patron William F. Kane bore the identifying number 252684-B and possessed the same characteristics as check #252686-B described in paragraph 7, supra. Attached hereto and incorporated herein and marked as Exhibit C-2 is a true copy of check #252684-B.

14. Check #252684-B was accepted and processed by the Sands in a manner similar to check #252686-B. Sands credit executive Robert Snowden placed his signature and license number in the upper right-hand corner of said check and general cashier Sue Marraffa prepared a computer printed "Redemption Voucher" and "Safekeeping Deposit Receipt" to evidence the transaction. Attached hereto and incorporated herein and marked as Exhibit D-2 are true copies of said documentation.

15. On gaming date January 4, 1983, patron William F. Kane negotiated two counter checks

at the baccarat pit at the Sands. Said counter checks were numbered 774 and 775, each in the amount of $5,000, and drawn upon account #6704014 at the Central Penn National Bank, Philadelphia, Pennsylvania. Attached hereto and incorporated herein and marked as Exhibits B-6 and B-7 are microfilm reproductions of said counter checks.

16. At approximately 12:21 a.m. on January 8, 1983 (gaming date January 7, 1983), patron William F. Kane presented to the Sands casino cage Swiss Bank Corp. check #252725-B. Said check was dated January 3, 1983 in the amount of $10,000 and possessed the same characteristics as described in paragraph 7, supra. A true copy of said check is marked as Exhibit C-3.

17. Check #252725-B was approved by Sands credit executive Robert Snowden and was utilized to redeem William F. Kane's outstanding counter checks #774 and #775. Said check was processed by casino cage cashier Lori Cohen who prepared a computer printed "Redemption Voucher" which is attached hereto and incorporated herein and marked as Exhibit D-3.

18. William F. Kane then negotiated two (2) counter checks on January 8, 1983 (gaming

date January 7, 1983) at the baccarat pit: counter check #647 in the amount of $15,000 at 12:28 a.m. and counter check #648 in the amount of $5,000 at 12:40 a.m. Said checks are attached hereto and incorporated herein and marked as Exhibits B-8 and B-9.

19. Shortly thereafter at approximately 12:51 a.m. on January 8, 1983 (gaming date January 7, 1983), patron William F. Kane presented "Swiss" checks #252723-B and 252724-B, each in the amount of $10,000 and dated January 3, 1983 to cage cashier Denise Ruble and cage shift supervisor Jean DiMartino. Said checks were accepted with the approval of credit executive Robert Snowden and processed for the purpose of redeeming counter checks #647 and #648. A "Redemption Voucher" was prepared to evidence said transaction. True copies of checks #252723-B and #252724-B are marked as Exhibits C-4 and C-5 and a true copy of the "Redemption Voucher" is marked as Exhibit D-4.

20. William F. Kane then negotiated counter check #649 at 1:10 a.m. on January 8, 1983 (gaming date January 7, 1983) at the baccarat pit. Counter check #649 was in the amount of

$15,000 drawn upon account #6704014 at the Central Penn National Bank, Philadelphia, Pennsylvania. A microfilm reproduction of said counter check is marked as Exhibit B-10.

21. At approximately 2:03 a.m. on January 8, 1983 (gaming date January 7, 1983), patron William F. Kane presented "Swiss" checks #252721-B and 252722-B, each in the amount of $10,000 and dated January 3, 1983 to casino cage cashier Lori Cohen. Said checks were accepted by the cage with the approval of Sands credit executive Steven Hann and they were processed for the purpose of redeeming counter check #649 and applying the remaining balance to the patron's safekeeping deposit account. A computer printed "Redemption Voucher" and "Safekeeping Deposit Receipt" were prepared by cage cashier Lori Cohen to evidence this transaction. True copies of said checks are attached hereto and incorporated herein and marked as Exhibits C-6 and C-7 and the supporting documentation is marked as Exhibit D-5.

22. On gaming date January 9, 1983, patron William F. Kane negotiated counter checks #687 and #688 at the baccarat pit at the Sands. Counter check #687 was issued at 2:45

p.m. on January 9, 1983 in the amount of $10,000 and counter check #688 was issued at 3:07 p.m. on January 9, 1983 in the amount of $10,000. Both counter checks were drawn upon account #6704014 at the Central Penn National Bank, Philadelphia, Pennsylvania. Microfilm reproductions of said counter checks are attached hereto and marked as Exhibits B-11 and B-12.

23. At approximately 3:54 p.m. on gaming date January 9, 1983, patron William F. Kane presented "Swiss" checks #252726-B and #252718-B, each in the amount of $10,000 and dated January 3, 1983 to casino cage cashier Joseph Cerone. Said checks were accepted at the cage with the approval of Sands credit representatives Kenneth Eisenberg and Paul A. Chandler and they were processed for the purpose of redeeming counter checks #687 and #688. A computer printed "Redemption Voucher" was prepared for each counter check being redeemed to evidence this transaction. True copies of said checks are attached hereto and incorporated herein and marked as Exhibits C-8 and C-9 and the Redemption Vouchers are marked as Exhibit D-6.

24. Patron William F. Kane next negotiated counter check #958 at 11:45 p.m. on gaming date January 9, 1983. Said counter check was issued at the baccarat pit in the amount of $10,000 and it was drawn on account #6704014 at the Central Penn National Bank, Philadelphia, Pennsylvania. A microfilm reproduction of said counter check is marked as Exhibit B-13.

25. At approximately 11:57 p.m. on gaming date January 9, 1983, patron William F. Kane presented his final "Swiss" check numbered 252717-B to the Sands Casino Cage Department. Said check was accepted at the casino cage by cashier Lester Gebhart with the approval of Sands credit representatives Kenneth Eisenberg and Paul A. Chandler. Check #252717-B was processed for the purpose of redeeming counter check #958. A computer printed "Redemption Voucher" was prepared to evidence this transaction. A true copy of check #252717-B is attached hereto and incorporated herein and marked as Exhibit C-10 and the Redemption Voucher is marked as Exhibit D-7.

26. January 3, 1983 was the first time that patron William F. Kane had presented for

acceptance any Swiss Bank Corp. checks to the respondent, Greate Bay Hotel and Casino, Inc., for any purpose.

27. All ten (10) of the "Swiss" checks presented by patron William F. Kane on gaming dates January 3, 1983, January 7, 1983, and January 9, 1983 were accepted by the respondent as cash equivalents. Respondent did not attempt to determine the validity of said "Swiss" checks by contacting the Swiss Bank Corporation prior to their proffer by William F. Kane.

28. On February 3, 1983, casino cage manager Patricia DiGiacomo prepared a memorandum to her direct supervisor, casino controller William Bagnell, concerning the Swiss Bank Account checks presented by patron William F. Kane on gaming dates January 3, 7, and 9, 1983. Attached hereto and incorporated herein and marked as Exhibit E is a true copy of said memorandum.

29. Swing shift supervisor Jean DiMartino also prepared a memorandum to her direct supervisor, cage manager Patricia DiGiacomo, dated July 28, 1983, concerning her involvement in the Swiss Bank Corp. checks proffered by patron William F. Kane. Attached hereto and

incorporated herein and marked as Exhibit F is a true copy of said memorandum.

30. Respondent Greate Bay deposited the ten (10) "Swiss" checks presented by William F. Kane in its depository bank, Midlantic National Bank, for foreign collection. In preparing said checks for deposit, Greate Bay's main bank cashier stamped each of the foreign checks with the notation "U.S. Funds". On February 16, 1983, seven (7) of the checks, totalling $70,000, were returned by the bank unpaid stating "counterfeit" and "maker unknown check believed to be forged."

31. After the Respondent notified William Kane of the returned checks, Mr. Kane came to the casino on February 19, 1983 and presented two (2) personal checks drawn on the Central Penn National Bank for $35,000 each to cover the returned items. On March 2, 1983, one of these personal checks was returned by the bank marked "insufficient funds".

32. On March 10, 1983, the remaining three (3) "Swiss" checks totalling $30,000 were returned by the bank unpaid for the same reasons stated in paragraph 30, supra.

33. The Division represents that its subsequent investigation indicated that the Swiss Bank

Corporation does not maintain an office at 17 Geneva, Zurich, Switzerland and that, in fact, no such address exists. A representative of the Swiss Bank Corporation office located in New York City confirmed the fact that the bank has no customer by the name of International Trust Fund, Ltd.

34. The Division also represents that its subsequent investigation disclosed that the maker of the checks, John D. Rasco, is in fact a separate individual from William F. Kane.

35. Greate Bay represents that the Swiss Bank Corp. checks proffered by patron William F. Kane on gaming dates January 3rd, 7th, and 9th, 1983 were accepted under the mistaken belief that the checks were foreign cashiers checks.

WHEREAS respondent, Greate Bay Hotel and Casino, Inc., acknowledges that the ten (10) Swiss Bank Corp. checks presented by patron William F. Kane on gaming dates January 3rd, 7th, and 9th, 1983 did not conform to the requirements of N.J.A.C. 19:45-1.1 defining cash equivalents, and therefore Greate Bay's acceptance thereof constituted violations of N.J.S.A. 5:12-101(b), and N.J.A.C. 19:45-1.25(b).

WHEREAS respondent, Greate Bay Hotel and Casino, Inc., acknowledges that, under the facts and circumstances of this case, credit executives performed functions that are the

responsibility of the cashiers cage regarding the acceptance of the checks in violation of N.J.A.C. 19:45-1.11(g).

WHEREAS respondent, Greate Bay Hotel and Casino, Inc., represents that its present policy regarding the decision making process to accept negotiable instruments as cash equivalents is that the cage shift supervisor makes the ultimate decision of whether or not to accept a negotiable instrument as a cash equivalent in accordance with the Casino Control Act, Commission regulations, and Greate Bay's Internal Controls. Greate Bay's credit department presently has no role in the decision making process of whether or not to accept a negotiable instrument as a cash equivalent.

WHEREAS respondent, Greate Bay Hotel and Casino, Inc., has implemented corrective measures in order to properly educate and instruct its employees as to what items may be accepted as cash equivalents and has expanded the scope of seminars conducted by representatives of Midlantic National Bank for its casino cage employees in order to properly educate and instruct said employees as to the nature and different types of foreign and domestic negotiable instruments.

WHEREAS the parties recognize the need to comply with the Casino Control Act and Commission regulations promulgated thereunder, and Greate Bay Hotel and Casino, Inc. has agreed to comply with the aforementioned statutory and regulatory provisions, recognizing the significance of any departures therefrom.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

Respondent, Greate Bay Hotel and Casino, Inc., t/a the Sands Hotel and Casino, shall pay the sum of $35,000 to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5) for the aforementioned regulatory violations of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.25(b), and N.J.A.C. 19:45-1.11(g) in full and final settlement of the allegations and claims raised in the Division of Gaming Enforcement's complaint.

Kevin F. O'Toole

Kevin F. O'Toole, Esq.
Deputy Attorney General
Attorney for Plaintiff
State of New Jersey, Department
of Law and Public Safety,
Division of Gaming Enforcement

Frederick H. Kraus

Roberto Rivera-Soto, Esq.
Frederick H. Kraus, Esq.
Attorneys for Respondent
Greate Bay Hotel and Casino, Inc.
t/a The Sands Hotel and Casino

(1/e)

TABLE OF EXHIBITS

Exhibit A — Copy of William F. Kane's credit application file at the Sands Hotel and Casino, Atlantic City.

Exhibit B — Microfilm reproductions of thirteen (13) counter checks negotiated by patron William F. Kane, itemized as follows:

Counter check #	Gaming Date	Exhibit #
873	12/24/82	B-1
10570	12/26/82	B-2
990	12/29/82	B-3
753	1/3/82	B-4
754	1/3/82	B-5
774	1/4/82	B-6
775	1/4/82	B-7
647	1/7/82	B-8
648	1/7/82	B-9
649	1/7/82	B-10
687	1/9/82	B-11
688	1/9/82	B-12
958	1/9/82	B-13

Exhibit C — Copies of ten (10) International Trust Fund, LTD's Swiss Bank Corp. checks presented by patron William F. Kane, each in the amount of $10,000 and made payable to William F. Kane, itemized as follows:

Check No.	Gaming Date	Exhibit #
252686-B	1/3/82	C-1
252684-B	1/3/82	C-2
252725-B	1/7/82	C-3
252723-B	1/7/82	C-4

252724-B	1/7/82	C-5
252721-B	1/7/82	C-6
252722-B	1/7/82	C-7
252726-B	1/9/82	C-8
252718-B	1/9/82	C-9
252717-B	1/9/82	C-10

Exhibit D — Copies of eleven (11) computer-printed Safekeeping Deposit Receipts and Redemption Vouchers pertaining to the Swiss Bank check transactions of patron William F. Kane, itemized as follows:

Gaming Date of Transaction	Time of Transaction	Exhibit Number
1/3/83	1:27 a.m.	D-1
1/3/83	2:18 a.m.	D-2
1/7/83	12:21 a.m.	D-3
1/7/83	12:51 a.m.	D-4
1/7/83	2:03 a.m.	D-5
1/9/83	3:54 p.m.	D-6
1/9/83	11:57 p.m.	D-7

Exhibit E — Copy of two (2) page internal memorandum dated 2/3/83 from Pat DiGiacomo, Sands casino cage manager, to Bill Bagnell, Sands casino controller, regarding "William F. Kane - Swiss Bank Account Checks."

Exhibit F — Copy of one (1) page internal memorandum dated 7/28/83 from Jean DiMartino, Sands casino cage shift supervisor, to Patricia DiGiacomo, Sands casino cage manager, regarding Mr. William F. Kane.

Exhibit G — Copy of one (1) page internal memorandum dated 11/19/82 from Patricia DiGiacomo, Sands casino cage manager, to all cage cashiers regarding safekeeping deposits.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-438
OAL DOCKET NO. CCC 1637-85
LICENSE NO. 40284-22
REGISTRATION NO. 10067-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
		FINAL ORDER
v.	:	
JEFFREY W. HAYES,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 11, 1985,

IT IS on this 12th day of September 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration and casino employee license of Jeffrey W. Hayes is dismissed based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Jeffrey W. Hayes, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1637-85
AGENCY DKT. NO. 84-438

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
JEFFREY W. HAYES,
Respondent.

William E. Mountford, Jr., Deputy Attorney General for petitioner (Irwin I. Kimmelman, Attorney General for New Jersey, attorney)

Jeffrey W. Hayes, respondent pro se

Record Closed: July 15, 1985 Decided: July 26, 1985

BEFORE **EDGAR R. HOLMES,** ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on December 31, 1984, seeking to revoke the respondent's casino employee license No. 40284-22 and casino hotel employee registration No. 10067-40 because he was alleged to possess Controlled Dangerous Substances (CDS) while he was in the Atlantis Casino Hotel, at which place he was employed. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on July 15, 1985, in the municipal court of Ventnor, Atlantic County.

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The Divisions' case was unrebutted, and from the documents submitted in evidence I **FIND:**

1. On October 26, 1984, the respondent was employed as a washroom porter at the Atlantis Casino/Hotel.

2. On the above mentioned date Special Officer Genzano found on the casino floor a small suitcase and a brown paper bag, unattended.

3. In the brown paper bag was a purse containing a payment book and a checkbook belonging to the respondent, together with 4.9 grams of marijuana and 1.92 grams of cocaine.

4. The respondent reported the bags missing. When confronted with the CDS, respondent told the investigators that he had no knowledge of the CDS and that Ms. Tracey Ellis, his girl friend, left the purse with him for safekeeping.

5. Ms. Tracey Ellis was interviewed by the investigators and acknowledged that she gave the purse to the respondent on October 26, 1984, for safekeeping and that it did contain the respondent's checkbook and other items belonging to him. She denied knowledge of the CDS.

The respondent called Tracey Ellis as his witness and she testified that on the night in question she was casino-hopping with some companions, Bug, Beetle, Junior and Jane. She testified that she chose that particular purse because it matched her dress. At that time she lived with the respondent. She kept the respondent's checkbook and coupon payment book in the purse because she was the one who paid the bills. She brought the purse to the respondent along with the house keys because she intended to continue "partying" and did not want to be encumbered by the purse. She said respondent needed the keys to get into the house. She did not know how the CDS got into her purse and suspects Bug, Beetle or Junior of hiding it there.

From the testimony of Tracey Ellis I make the single **FINDING** that:

6. On October 26, 1984, Ms. Tracey Ellis brought the purse containing the CDS to the Atlantis Casino Hotel and gave it to the respondent so that he would bring it home to their joint residence when he finished work.

The respondent testified that the CDS were not his and that he had no knowledge that they were in the purse. He speculated on the number of ways the CDS could have gotten into the purse without Tracey Ellis's knowledge. He said he placed the purse with his suitcases which were full of the equipment he uses as a porter after Ms. Ellis brought it to him. He was preparing to close up shop for the night. He said he was too smart to leave CDS sitting out unattended on a casino floor. In addition, respondent introduced evidence that the Atlantic County Prosecutor dismissed charges of possession of CDS against him on February 18, 1985. He believes it was because of insufficient evidence. From his testimony I cannot **FIND** that respondent knew that the purse contained CDS.

I **CONCLUDE** that the Division has failed to prove by a preponderance of the believable and credible evidence that respondent knowingly possessed CDS on October 26, 1984, in the Atlantis Casino Hotel.

I therefore **ORDER** that the complaint filed by the Division of Gaming Enforcement be **DISMISSED WITH PREJUDICE.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 26, 1985
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

July 29, 1985
DATE

Nancy A. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 30, 1985
DATE

Gabriel Torres
OFFICE OF ADMINISTRATIVE LAW

ks

WITNESSES

For Division of Gaming Enforcement:

None

For respondent:

Tracey Ellis

Jeffrey Hayes

EXHIBITS INTO EVIDENCE

P-1 Includes investigation report marked exhibit 1; arrest report marked exhibit 2; property report marked exhibit 3; complaint marked exhibit 4

P-2 Lab report and request

R-1 Prosecutor's dismissal report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-137
OAL DOCKET NO. CCC 0036-84
REGISTRATION NO. 12082-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
JORGE HERNANDEZ,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 5, 1984,

IT IS on this 30TH day of September 1985, ORDERED that the initial decision is modified as follows:

1. That portion of the initial decision which addresses the respondent's conviction on March 6, 1970, for manslaughter in violation of N.J.S.A. 2A:113-5 in terms of an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4) is rejected. The Commission finds and concludes that the respondent's conviction for manslaughter, in violation of N.J.S.A. 2A:113-5, equivalent to N.J.S.A. 2C:11-4, is a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1).

2. For essentially the reasons noted in the initial decision at pp. 3-4, the respondent has demonstrated his rehabilitation from his section 86(c)(1) disqualifying conviction by clear and convincing evidence pursuant to N.J.S.A. 5:12-91(d).

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Jorge Hernandez is dismissed based upon the facts set forth in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondent, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 36-84
AGENCY DKT. NO. 83-137

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JORGE HERNANDEZ,
Respondent.

APPEARANCES:

Joanne Cocchiola, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Donald D. Phillips, Esq., for respondent

Record Closed: June 25, 1984 Decided: July 18, 1984

BEFORE **JEFF S. MASIN,** ALJ:

The Division of Gaming Enforcement (Division) seeks an order from the Casino Control Commission revoking the casino hotel employee registration of Jorge Hernandez. The Division filed a complaint with the Commission on May 2, 1983 in which it contended that Mr. Hernandez had been convicted in 1970 of manslaughter and that as a result of this conviction and the terms of section 86(c) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., the Commission was required to deny a registration to Mr. Hernandez. Further, the Division contended that continued registration of Mr. Hernandez would be

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inimical to the policies of the Casino Control Act and the casino operations in the State of New Jersey inasmuch as such violation would inavoidably tend to erode public trust and confidence in the credibility, integrity and stability of casino operations and the regulatory framework created by the Casino Control Act.

The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 23, 1984 and a Prehearing Order was issued on March 30, 1984. A hearing was held on the matter at the Northfield Municipal Court on June 25, 1984.

At the prehearing conference the Division also raised the issue of whether Mr. Hernandez had improperly failed to disclose his manslaughter conviction on his application for registration. An intentional failure to disclose material facts related to registration would be a violation of N.J.S.A. 5:12-86(b) and would require denial of licensure.

Agent Michael P. Orsini, a Division employee for five years, testified that he had reviewed the application filed by the respondent on November 19, 1979 and had determined that in connection with the question posed concerning whether the applicant had ever been convicted of a criminal offense, Mr. Hernandez had answered "D.N.A." indicating does not apply. When Agent Orsini telephoned Mr. Hernandez to question him concerning the fact that he had not listed his manslaughter conviction, Hernandez indicated that because the conviction was, at the time of the application, more than five years old he did not believe that he had to disclose it.

Jorge Hernandez testified that he and his wife had prepared the application for registration. At the time Mrs. Hernandez was more fluent in English and she questioned Mr. Hernandez and then she wrote out the answers. They checked the box for "does not apply" and wrote in the letters "D.N.A." because Mr. Hernandez believed that a conviction that was more than five years old did not have to be listed. He explained that this was his understanding of the law in Puerto Rico where he came from. He claimed that he believed that he would obtain a casino registration regardless of whether he listed his conviction because he had served his time and done his parole and did not believe that the conviction would interfere with his receiving a registration. Hernandez has never been convicted of any offense other than the manslaughter.

With respect to the circumstances of the criminal incident, testimony received from Hernandez indicated that on November 30, 1968 he became involved in a dispute in a bar. Hernandez was charged with murder along with five other defendants. The decedent, Albert Flacco, was found to be highly intoxicated at the time of the incident. His blood alcohol level was reported at .027, a very high level. According to evidence presented and representations made by counsel for Hernandez, who was also counsel at the criminal trial, the medical examiner filed a report at the time of the autopsy that the death had occurred as the result of one stab wound. Mr. Hernandez indicated that he had been drinking, as had everyone else involved in the incident, including, of course, Mr. Flacco.

As a result of his conviction following trial, Mr. Hernandez was sentenced to an indeterminant term at the Yardville Youth Correction Facility. Hernandez was born in 1949 and was 19 years old at the time of the incident. He served eight months of the sentence. He then was released on parole and had no problem during his parole period. He was employed at the Holiday Inn for about nine years and has worked at Caesar's Boardwalk Regency Hotel since 1979. He has not missed a day at work and has received two promotions during his period of employment at Caesar's. He started as a porter and then became a supervisor. He is now the swingshift manager in the kitchen and supervises 60 or more employees. He has been a supervisor for four and one-half years and the swingshift manager for three years.

Having heard the evidence in this case and considered the circumstances in connection with the manslaughter conviction, I have no question but that Mr. Hernandez should not lose his registration because of that criminal involvement. While a very young man, Hernandez became embroiled in what appears to have been a barroom brawl type of situation which, unfortunately, lead to a death. While Hernandez was convicted of a criminal offense and his conduct certainly cannot be excused, he paid his debt to society long ago by serving time in prison and also on parole. It is obvious that Mr. Hernandez has been a hard working citizen for many years now and his stability is reflected by the lengthy periods of employment at the Holiday Inn and Caesar's, as well as his obvious success at Caesar's. This is a man who, having regretfully engaged in very serious criminal conduct as a youth, has brought himself up and has raised himself above his past and is now a highly responsible and obviously quite respected employee in the industry. I can find nothing about his continued registration which would be inimical. The fact that someone committed a manslaughter in 1968 will have little or no affect upon the public's

perception of the casino industry in 1984 where the history of the individual indicates many years of responsible citizenship after the payment of a debt to society. Therefore, the allegation that the registration should be revoked because of inimicality is **DISMISSED.**

The more difficult issue in this case is the failure of Mr. Hernandez to disclose his conviction. It is quite obvious that one with a conviction for a serious offense such as manslaughter might well believe that listing the conviction on an application for licensure or registration might hurt his chances for receiving the approval of the Commission and therefore might lead the person to withhold information about the conviction. In Mr. Hernandez's case, he states that he did not purposely and intentionally attempt to evade detection or deceive the Commission, but that he did not put down the conviction because of its age and his belief, apparently based in part on his understanding of the law in Puerto Rico, that a conviction five years or older need not be listed on a document such as the Personal History Disclosure Form. Mr. Hernandez did not list it despite his acknowledgement that he had been familiar with warnings contained in bold print in the disclosure form which read:

IMPORTANT:
Failure to answer any question on this form
completely and truthfully will result
in denial of your license application.

Because of the serious nature of Hernandez's conviction, there is perhaps some reason to feel that he was concerned about listing the incident. However, at the time that Mr. Hernandez applied for registration he had been employed in Atlantic City in the hotel industry for many years and had had no further problems with the law. He completed his parole and appears to have had little reason to be terribly concerned about the consequences of an act that had occurred in 1968. While I am not entirely free of doubt in this matter, I **FIND** that Mr. Hernandez's explanation is not beyond belief and that, in veiw of his history, giving him the benefit of the doubt, I am able to find by a preponderance of the evidence that he did not willfully and intentionally conceal information relevant to registration. I **FIND** that he did not list the conviction because he did not believe it necessary. While he was mistaken about this, the mere fact that he did not list the conviction does not in and of itself require denial of registration. It is only where there is an attempt to deceive that the statute demands denial of registration.

For the reasons expressed, I **CONCLUDE** that the Division's application for revocation of Mr. Hernandez's casino hotel registration should be **DISMISSED.** It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 18, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 19, 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 23 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

EVIDENCE LIST

On behalf of the petitioner:

P-1 Personal History Disclosure Form

P-2 Certified copy of Atlantic County Superior and County Court Criminal Record, consisting of 10 pages

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-84
APPLICATION NO. 51085-21
REGISTRATION NO. 57421-40
OAL DOCKET NO. CCC 4357-84

APPLICATION OF LANCE M. HOLLIS

FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 16, 1985,

IT IS on this 9th day of AUGUST 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Lance M. Hollis is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Lance M. Hollis is prohibited from reapplying for or obtaining any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Lance M. Hollis from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Lance M. Hollis, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4357-84

AGENCY DKT. NO. 84-EA-84

LANCE HOLLIS,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Lance M. Hollis, petitioner, pro se

Joanne Cocchiola, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: October 2, 1984 Decided: November 16, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner has applied for a casino employee license to work as a blackjack dealer. The Division of Gaming Enforcement (Division) objected to petitioner's licensure by letter to the Casino Control Commission (Commission) dated May 3, 1984.

A prehearing conference was held before Administrative Law Judge Jeff S. Masin, resulting in a prehearing order being entered on July 27, 1984, which set forth the following issue to be resolved at the hearing:

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Can petitioner establish by clear and convincing evidence his reputation for good character, honesty and integrity required by N.J.S.A. 5:12-89b(2). (The Division's objection to petitioner's licensure was based upon petitioner's arrest and conviction record as well as alleged termination of employment of petitioner by three casinos.)

A hearing was held on October 2, 1984 at Absecon City Hall, Absecon, New Jersey.

FACTUAL FINDINGS

Petitioner, age 25 years, has the following arrest and conviction record:

1. On September 13, 1977 petitioner was arrested by the Atlantic City Police Department and charged with breaking and entering and attempted larceny in violation of N.J.S.A. 2A:94-1. The charges were downgraded to presence in or near a building with intent to steal, a violation of N.J.S.A. 2A:170-3 (a disorderly persons offense.) Petitioner pled guilty in municipal court, and received a 30-day suspended sentence and six months probation) contingent upon proof of petitioner's military enlistment (R-1).

2. On December 31, 1982, petitioner was arrested by the Atlantic City Police Department and charged with receiving stolen property, in violation of N.J.S.A. 2C:20-7 (R-2). On January 13, 1983, petitioner reported to the Atlantic City Police Department Detective Bureau that he did have possession of certain stereo equipment which he claimed had been stolen by another man (R-2). On February 15, 1983, petitioner was indicted for theft by receiving and having in his possession stolen property valued in excess of $500 (R-3). Petitioner entered into a plea agreement on August 30, 1983, wherein he pled guilty to theft by receiving stolen property with a value of less than $200 (R-3). He was sentenced to one year probation on the condition that he maintain full-time employment, pay a fine of $250 (payable at $5.00 per week), and that he serve three days in the Atlantic County Jail with credit to be given for three days served (R-3).

3. On May 19, 1983, petitioner was arrested by the Atlantic City Police Department for theft of movable property (one pocketbook and $70 in currency) in violation of N.J.S.A. 2C:20-3 (R-4). The case was dismissed for lack of prosecution, the complaining witness being a resident of Bethesda, Maryland.

4. On August 13, 1983, petitioner was arrested by the Pleasantville Police Department for possession of six nickel bags of marijuana in violation of N.J.S.A. 24:21-20a(3) (possession under 25 grams). Petitioner pled guilty and received a six month conditional discharge (R-5).

5. On November 7, 1983, petitioner was arrested by the Egg Harbor Township Police Department and charged with two counts of shoplifting, the first violation allegedly occurring on November 27, 1982 for shoplifting groceries having a value of $3.78 in violation of N.J.S.A. 2C:20-11. The second violation occurred on January 27, 1983, wherein petitioner allegedly shoplifted two sets of wheel locks valued at $35.98. He pled guilty to both counts of shoplifting in January and February 1983 (R-6). Petitioner was fined a total of $525 for both counts, costs were assessed in the amount of $50, and $25 was to be paid to the Violent Crimes Compensation Board (R-6).

6. On September 21, 1983, a bench warrant was issued by the Egg Harbor Township Municipal Court charging petitioner with a violation of N.J.S.A. 2A:10-1C for contempt of court for failure to comply with the court order permitting installment payments of the fines assessed against him for the two shoplifting charges (R-7).

7. On May 8, 1984 petitioner was again arrested for contempt of court for failure to pay the fines incurred in connection with the shoplifting charges. The fines were ultimately paid on July 8, 1984.

Edward Francis Bals was employed by the Division as an investigator from June 1, 1981 until April 6, 1984. On March 20, 1984, Investigator Bals conducted a telephone interview of petitioner concerning his casino employee license application.

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Petitioner's Personal History Disclosure Form - 2A (PHDF-2A) disclosed the arrest and disposition of the incidents of September 13, 1977, November 7, 1982, January 8, 1983, and January 27, 1983 (R-12). Investigator Bals explained that when a Division investigator completes a background investigation, he obtains reports pertaining to the applicant from the State Bureau of Investigation, which reports are then matched with the information submitted by the applicant on his personal history disclosure form. During his interview with Investigator Bals, petitioner told him that he had never been arrested except for the four incidents reported on his PHDF-2A. Investigator Bals specifically asked petitioner if he had ever been arrested in Pleasantville, to which petitioner replied "no." When Investigator Bals specifically mentioned the charges of possession of marijuana, petitioner admitted that he had in fact been arrested in Pleasantville, New Jersey, but stated that he did not disclose the arrest on his PHDF-2A because he received a conditional discharge. As of the date that Investigator Bals completed his investigation report in March 1984, petitioner still owed $600 in fines to the Egg Harbor Township Municipal Court.

Thomas Eddie Hollinger has been employed as an agent for the Division since August 10, 1982. He completed an investigation of petitioner in preparation for the hearing and is familiar with the contents of petitioner's PHDF-2A. Agent Hollinger specifically investigated the contempt of court charges for failure to pay the fines, and ascertained that when petitioner was arrested in May 1984, he was given until July 2, 1984 to pay the fines in full. Agent Hollinger confirmed that petitioner did pay the full balance owed on the fines on approximately July 9, 1984.

Petitioner has had the following casino employment experience:

1. May 1982 - July 1982. He was employed as a slot booth cashier and was terminated for failure to attend a mandatory employment meeting during the time that he was employed on a probationary basis (R-10, R-11).

2. April 1982 - May 1982. He was employed at the Tropicana Hotel Casino in the housekeeping department and was terminated for leaving his assigned work area without permission (R-9).

3. February 1981 - June 1981. He was employed by Harrah's Hotel Casino as a steward. He was terminated for failure to report to work or call in on June 9, 1981 (R-8).

Petitioner offered the following explanations of his arrest and conviction record:

1. With regard to the September 13, 1977 charges of breaking and entering and attempted larceny, petitioner stated that he was not actually in the premises broken into, however, he was seen running away from the scene of the crime. Petitioner's friend actually broke into the apartment because there was substantial marijuana stored in the victim's closet. Petitioner had informed his friend about the marijuana and where it was located. At the time of this arrest, petitioner was in the process of enlisting in the United States Army and was due to report to Fort Worth, Texas. When the Army ascertained that he had been arrested, petitioner claims that the Army did not want to complete the paperwork involved, and told him to enlist in the Marines. Petitioner did not enlist in any branch of United States military service.

2. Petitioner states that his shoplifting charges resulted from his immature and irresponsible behavior on his part at the time.

3. He stated that he pled guilty to the charges of receiving stolen property because he did not have transportation to Mays Landing, New Jersey, where he was to appear in court each time the matter was listed for hearing. He claimed the circumstances of the arrest were such that he was going to the store for his mother whereupon he encountered two friends who asked him if he knew someone who wanted to buy a stereo. Respondent ultimately sold the stereo at Harrod's Pawn Shop, receiving $50, retaining $5 for himself (having turned over the remainder of the money to his friends). When he went to the Atlantic City Police Department to answer the charges of receiving stolen property, the bench warrant for contempt of court was discovered and he was arrested on those charges.

4. Petitioner claims that he did not report the marijuana charges on his PHDF-2A because it was his understanding that having received a conditional discharge, his criminal record would not reflect that arrest and therefore there was no need to report it during the application process.

5. Petitioner did not report the contempt charges on his PHDF-2A because he did not consider them to be criminal charges. He was unable to pay the fines when ordered to do so because he was unemployed for 15 months during 1983 and 1984 and had a family to take care of including a son, daughter and his girlfriend's two children. At the contempt proceeding petitioner told the judge that he was employed even though he was not, because he was afraid of incarceration. He ultimately paid the fines from paychecks he received from a job he has held at Harrah's Hotel Casino in the housekeeping department for the past five months.

Respondent was hired as a blackjack dealer by Harrah's Hotel Casino but has not commenced employment because of his pending license application. Respondent passed the blackjack course at the Casino Career Institute in February 1984. He attributes his criminal history to being young, immature and irresponsible. He also attempted to rationalize his employment history through stating that if he does not like a job, he does not take it seriously, particularly noting the job at the Tropicana Hotel Casino where he was around people whose job was picking up trash, claiming he felt "belittled."

George Powell has known petitioner for approximately 15 years as a result of having lived with petitioner's mother. Mr. Powell has been employed by the Atlantic City Fire Department for the past 26 years, where he is presently employed as a fire captain. He has attempted to act as a father to petitioner for the past four or five years, and encouraged him to attend dealer school and enter the casino industry. Mr. Powell's perception of petitioner is that he has a nice personality, is courteous to people, is conscientious, has grown up to be a good young man, and has improved himself in the past three years. He feels that petitioner deserves a chance to further improve himself. He observed that during petitioner's 15 months of unemployment, petitioner attempted to look for work. Mr. Powell has posted bail for petitioner twice.

On July 9, 1984, petitioner received a Notice of Outstanding Service Commendation from Harrah's Hotel Casino as a result of finding and turning in a Security Department Radio which he found on a bench inside an auto display across from the hotel entrance (P-1).

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-89b(2) as incorporated in section 5:12-90b requires every casino employee license applicant to produce such information, documentation and assurances as may be required to establish by clear and convincing evidence, the applicant's reputation for good character, honesty and integrity, and such information shall include information data pertaining to the applicant's ". . .family, habits, character, criminal and arrest record. . ."

Petitioner's arrest and criminal record from September 1977 through July 1984 is not insignificant. Petitioner has developed a history of minor criminal activity resulting in five guilty pleas during a six year period. Just as disturbing, is petitioner's history of failing to comply with court orders, i.e., his failure to enroll in the United States Military, to maintain employment, and to pay court-ordered fines which resulted in two contempt charges. Petitioner's casino employment history is also less than impressive. His explanation of his failure to adequately perform jobs he did not like is an unacceptable excuse with regard to attempting to justify his prior poor employment record in the casino industry.

Also of significance is the position for which petitioner is seeking a license, i.e., blackjack dealer. It is indisputable but that the position of a dealer requires a person who is responsible, mature and honest. Petitioner has attributed his criminal background to immaturity and lack of responsibility. While that may certainly be the case, the totality of the circumstances of petitioner's employment and criminal background, including contempt charges which were not satisfied until three months prior to this hearing date, place upon petitioner a substantial burden of demonstrating his reputation for good character, honesty and integrity. The position of a blackjack dealer is one which by its very nature requires exposure to the gaming public. It is unacceptable to have an individual with a lengthy and relatively recent criminal record employed in that position.

While petitioner is to be commended for his Notice of Outstanding Service Commendation, that award in and of itself is not sufficient to negate his burden of overcoming his poor reputation for good character, honesty and integrity by clear and convincing evidence.

I have considered the testimony of George Powell who has described himself as having a father-son relationship with petitioner for the past four or five years. However, his comments that petitioner has improved in the past three years appears to be an idealistic perspective and one which is contradicted by petitioner's criminal record, which speaks for itself. While he described petitioner as having a nice personality and being courteous, personality alone is not enough to overcome a criminal background.

I **CONCLUDE** that petitioner has failed to meet his burden of proof by clear and convincing evidence of establishing his reputation for good character, honesty and integrity.

ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner's application for a casino employee license permitting him to work as a blackjack dealer is hereby **DENIED.** This order does not in any way affect any casino registration which petitioner may presently hold.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 16, 1984
DATE

Valerie H. Armstrong/s
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION
Lynn D McDowell
Principal Legal Analyst

Mailed to Parties:

NOV 21 1984
DATE

Ronald L. Parker/pkb
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS

P-1 Notice of Outstanding Service Commendation, dated July 9, 1984

R-1 Complaint In the Matter of State of New Jersey v. Lance Hollis, dated September 13, 1977

R-2 Arrest report, investigation report, supplementary investigation report, Atlantic City Police Department, dated December 20, 21 and 31, 1982 and January 13, 1983 (6 pages)

R-3 Indictment Number 2-169-83-C, dated February 15, 1983; Atlantic County Superior Court criminal record for Lance Hollis, dated February 15, 1983; Complaint In the Matter of the State of New Jersey v. Lance Hollis, dated August 30, 1983; Atlantic County Criminal Court Order for Presentence Investigation (date unclear); plea bargain agreement, dated August 30, 1983 (8 pages)

R-4 Complaint In the Matter of the State of New Jersey v. Lance Hollis, dated May 19, 1983

R-5 Pleasantville Police Department Arrest Report and Investigation Report, dated August 13, 1983; Complaint In the Matter of the State of New Jersey v. Lance Michael Hollis, dated August 13, 1983 (6 pages)

R-6 Egg Harbor Township Police Department Arrest Report, dated November 7, 1983; Complaint In the Matter of the State of New Jersey v. Lance Hollis, dated November 27, 1982; Complaint In the Matter of the State of New Jersey v. Lance M. Hollis, dated January 27, 1983 (3 pages)

R-7 Bench Warrant In the Matter of the State of New Jersey v. Lance Hollis, dated September 21, 1983

R-8 Letter dated August 6, 1984 from Harrah's Hotel Casino to Division of Gaming Enforcement with attachments (5 pages)

R-10 Letter from Division of Gaming Enforcement to Claridge Hotel and Casino, dated July 27, 1984

R-11 Payroll information form pertaining to Lance Hollis from Claridge Hotel Casino, dated July 23, 1982

R-9 Letter from Division of Gaming Enforcement to Tropicana Hotel and Casino, dated July 27, 1984 with attachments (7 pages)

R-12 Petitioner's Personal History Disclosure Form - 2A, dated December 5, 1983 (24 pages)

LIST OF WITNESSES

FOR THE PETITIONER:

Lance Hollis

George Powell

FOR THE RESPONDENT:

Edward Francis Bals

Thomas Eddie Hollinger

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-268
REGISTRATION NO. 43399-40
OAL DOCKET NO. CCC 6896-83

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

LEO M. HOLLOWAY,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 14, 1984,

IT IS on this 4TH day of December 1985, ORDERED that the initial decision is modified as follows:

1. The administrative law judge found that the Division of Gaming Enforcement had failed to establish by a preponderance of the evidence that any action should be taken against the respondent's license [sic - registration] and therefore, dismissed the complaint. However, based upon the judgment of conviction dated January 14, 1982, for the offense of armed robbery, contrary to N.J.S.A. 2C:15-1, (P-2 in evidence) the Commission finds the respondent disqualified pursuant to N.J.S.A. 5:12-86(c)(1).

2. Based upon the evidence in the record, the respondent has failed to demonstrate by clear and convincing evidence, his rehabilitation from such disqualifying conviction pursuant to the criteria set forth in N.J.S.A. 5:12-91(d).

3. In light of all the circumstances and pursuant to N.J.S.A. 5:12-91(e), it is consistent with public policy and in the interests of justice to waive the respondent's disqualification and to permit him to retain his casino hotel employee registration.

IT IS FURTHER ORDERED that Leo M. Holloway is disqualified substantially for the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Leo M. Holloway's disqualification is waived pursuant to N.J.S.A. 5:12-91(e), permitting him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Leo M. Holloway is prohibited from applying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Leo M. Holloway, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6896-83
AGENCY DKT. NO. 83-268

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF
GAMING ENFORCEMENT,
Petitioner
v.
LEO M. HOLLOWAY,
Respondent.

APPEARANCES:

Anthony V. D'Elia, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Leo M. Holloway, Pro Se

Record Closed: December 19, 1983 Decided: February 1, 1984

BEFORE **JEFF S. MASIN**, ALJ:

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking the casino hotel employee registration held by Leo Holloway. The basis for the proposed revocation is the fact that Mr. Holloway was convicted of armed robbery. The conviction was entered in the Superior Court of New Jersey, Law Division, Gloucester County on indictment 734-80. Mr. Holloway entered a plea of guilty to that

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indictment charging a violation of N.J.S.A. 2C:15-1 on December 3, 1981. He was sentenced on January 14, 1982 by Honorable Milton Silver, J.S.C., to one year strict reporting probation and was ordered to pay a $25 penalty to the Vineland Crimes Commission. Judge Silver indicated that he was sentencing Mr. Holloway to probation because the defendant was then 20 years of age and had only a prior disorderly persons offense. The judge further indicated that he saw no aggravating circumstances requiring incarceration and noted that Mr. Holloway, while "well aware of what was taking place" appeared to have been "influenced by his co-defendant."

Mr. Holloway is employed by Harrah's Casino Hotel in the Housekeeping Department. He has been employed since August 7, 1982. Terry Haverstick, Executive Housekeeper, submitted a letter to Lathan Pridgen, Affirmative Action Officer for the hotel, in which Mr. Haverstick noted that Holloway had a very effective work performance and that he had the capacity to move up the "ladder". Mr. Pridgen testified at the hearing describing Holloway as an exemplary employee with a good work record and attitude as well as good attendance. According to Pridgen, Holloway's employment at this time, pursuant to a No. 4 license, was in the housekeeping of the hotel area in rooms from which patrons had checked out. Therefore, there was no reason for Holloway to ever be in a room occupied by a patron except under unusual circumstances with the supervision of supervisory personnel.

Mr. Holloway testified that he is the sole support of his family, which consists of two children as well as a sister for whom he cares. His sister is not employed at this time. He previously worked for Service Master Cleaning and left to go to Harrah's in order to make more money. He described his criminal involvement as occurring when he was approached at his house by a gentleman named Abbate, who stated that he had stolen speakers which he was trying to sell. Holloway and his friend, Watson, took Abbate to another house, Holloway going with Abbate in Abbate's truck. Watson followed in a car. When they arrived at the other house, according to Holloway's version, Watson pulled a knife and forced Abbate to turn over the speakers. Watson left with the speakers in a car and Holloway walked away from the scene.

The Division of Gaming Enforcement presented the investigation reports compiled by the Woodbury Police Department with respect to the incident which occurred on July 9, 1980. These documents, which are admittedly hearsay, indicate the nature of

the police investigation. They are accompanied by a statement given by the co-defendant, Edward Watson, in which Watson indicates that Mr. Holloway was the individual who pulled a knife on Mr. Abbate while both Holloway and Abbate were in Abbate's van and Watson was following in an automobile. This statement, also hearsay, and given by a co-defendant with much to gain by attempting to establish that he was not the person who pulled the knife but that Holloway was, while admissible in these proceedings because it is relevant, hardly appears to be the type of evidence which should be given much weight in light of the absence of live testimony by Watson and cross-examination. It is hard to conceive that this is the type of evidence which reasonable men would give very much weight to in the conduct of serious business affairs such as this license revocation proceeding. Particularly where the burden of establishing a basis for revocation is upon the Division of Gaming Enforcement, it is asking a great deal for the Division to expect that a finder of fact will rely upon the statement of a criminal co-defendant which implicates the respondent in these proceedings to a great degree and which is not supported by competent evidence in the nature of live testimony from the co-defendant. Therefore, having read Mr. Watson's statement, I **CONCLUDE** that it can be given little independent weight in determining what exactly happened at the time of the robbery. At the same time, I am not all together convinced by Mr. Holloway's version that he was totally unaware of what was going to happen at the time of the robbery. Indeed, I suspect he knew, and whether he pulled the knife or not, he appears to have been as involved as Mr. Watson was.

Despite my comments concerning Holloway's criminal activity, I do not believe that it is necessary to revoke his license. The incident in question occurred some years before he became employed in the casino industry. He successfully completed his probation in January or February 1983. He has been employed in the casino industry since August 1982, a period of approximately one and a half years. He has a good record and has had no further involvement with the law. While the incident in which he was involved was a serious one, involving the use of a weapon (whether by Watson or Holloway), given the age of the respondent at the time, and what appears to be the relative lack of planning involved (this seems to have been more of a spur-of-the- moment incident than a planned robbery), it appears that permitting Mr. Holloway to continue his employment will not endanger the policies of the Casino Control Commission nor the interests of the casino industry. It does not seem likely that his present employment will lead him to engage in criminal conduct. On the contrary, the employment may be a necessary and not undesirable adjunct to his ongoing rehabilitative process.

I **FIND** no basis for a revocation. The Division has failed to establish by a preponderance of the evidence that any action should be taken against the respondent's license. Therefore the action is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 1, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

February 7, 1984
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Feb. 6, 1984
DATE

Ronald L. Lankenau
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS IN EVIDENCE

On behalf of petitioner:

P-1 Indictment No. 734-80 and Indictment 833-79; Order of Dismissal

P-2 Judgment of Conviction on Indictment No. 414-80

P-3 State of Watson

P-4 Investigation Report

On behalf of respondent:

R-1 Memo from Terry Haverstick to Lathan Pridgen

FOR IDENTIFICATION ONLY

P-5 Personal History Disclosure Form - 4

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-205
OAL DOCKET NO. CCC 7350-84
VENDOR REGISTRATION NO. 01711

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

INDUSTRIAL VALLEY REFRIGERATION, INC.,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the Division of Gaming Enforcement and a reply thereto having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of July 31, 1985,

IT IS on this 23rd day of August 1985, ORDERED that the initial decision is modified as follows:

> The recommended sanction of a letter of reprimand be rejected as inconsistent with a finding that the vendor is currently disqualified pursuant to section 86 of the Act.

IT IS FURTHER ORDERED that, consistent with the finding of disqualification, Industrial Vally Refrigeration, Inc., is removed from the Commission's master vendor's list substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part

hereof; and

IT IS FURTHER ORDERED that James McGinley is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that Industrial Valley Refrigeration, Inc. is prohibited from conducting direct or indirect business with or supplying any goods or services to any casino licensee or to any casino agent or employee acting on behalf of a casino licensee until further order of the Commission; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Industrial Valley Refrigeration, Inc. and casino licensees or employees or agents acting on behalf of casino licensees be terminated within fifteen (15) days of the date of this order; and

IT IS FURTHER ORDERED that copies of this final order be served upon Industrial Valley Refrigeration, Inc., the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7350-84

AGENCY DKT. NO. 84-205

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

INDUSTRIAL VALLEY REFRIGERATION, INC.,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Charles A. Matison, Esq., for respondent (Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, attorneys)

Record Closed: March 28, 1985 Decided: May 14, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement (Divison) filed with the Casino Control Commission on June 14, 1984, seeking judgment revoking the respondent's Casino Service Industry License, or some other appropriate sanction, pursuant to Section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq). The respondent filed an answer and defenses on July 13, 1984. The issues to be determined in this matter are as follows:

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1. Whether the conduct as alleged in paragraphs four and five of the Division's complaint constitutes criminal conduct which is equivalent to a violation of N.J.S.A. 2C:21-10c (a crime of the fourth degree) and is therefore inimical to the policy of the Casino Control Act and to casino operations, pursuant to Section 86c(4) of the Act, even if such conduct has not been or may not be prosecuted under the laws of New Jersey, pursuant to Section 86g of the Act.

2. If a finding is made in favor of the Division with regard to the above issue, what sanctions are appropriate, based upon the circumstances of this case, pursuant to Section 129 of the Act.

PROCEDURAL HISTORY

The respondent's answer to the Division's complaint was filed with the Casino Control Commission on July 13, 1984. On September 28, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference in this matter was conducted by Administrative Law Judge Valerie H. Armstrong on November 7, 1984. The matter was subsequently reassigned to the undersigned and following an adjournment for good cause, the hearing was held on March 28, 1985.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The parties have expressly agreed to the following facts by stipulation (Exhibit J-1):

1. State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement is responsible, pursuant to P.L. 1977, subsection 76, for the enforcement of the provisions of the Casino Control Act and the regulations promulgated thereunder, and for the prosecution before the Casino Control Commission of all proceedings for violations of the Casino Control Act and the regulations promulgated thereunder.

2. Industrial Valley Refrigeration, Inc. (IVR) is now and was at all times relevant to this matter a Pennsylvania corporation located at 1608 Fairmont Avenue, Philadelphia, Pennsylvania 19130. Further, at all times relevant to this matter, James McGinley was the corporate president of IVR and Anthony Nastasi was the corporate vice president.

3. IVR is the holder of casino service industry license number 770, issued by the Casino Control Commission on January 24, 1979 and subsequently renewed on March 16, 1983.

4. At various times betwen 1973 and 1983 IVR provided goods and services to Temple University through the Purchasing Department and the Physical Plant Department of the said university.

5. In or about 1974, John J. Nardini and Thomas J. Siedzkowski, employees of Temple University performing services in a department known as the Purchasing Department of Temple University whose responsibilities included the proper administration of competitive bidding, the letting of contracts, and negotiation with vendors, met with James McGinley and Anthony Nastasi and demanded the payment of money in return for their influence and agreeing to use their influence in the course of their employment at Temple University for the continued economic benefit of IVR.

6. Between 1973 and June of 1983, James McGinley and Anthony Nastasi, on behalf of IVR, conferred a monetary benefit upon John J. Nardini and Thomas J. Siedzkowski in accordance with the demand referenced in Paragraph 5. James McGinley and Anthony Nastasi, on behalf of IVR, made payments in the approximate amount of $18,500 to John J. Nardini and Thomas J. Siedzkowski.

7. In or about 1982, Charles Peck, an employee of Temple University performing services in a department known as the Physical Plant Department of Temple University whose responsibility included the proper ordering of parts, supplies and services from approved vendors such as IVR, met with James McGinley and Anthony Nastasi and

demanded the payment of money in return for his influence and agreeing to use his influence in the course of his employment at Temple University for the continued economic benefit of IVR.

8. During 1982, James McGinley and Anthony Nastasi, on behalf of IVR, conferred a monetary benefit upon Charles Peck in accordance with the demand referenced in Paragraph 7. James McGinley and Anthony Nastasi, on behalf of IVR, made payments in the approximate amount of $1,900 to Charles Peck.

9. In or about 1982, Michael Moan, George Wilson and William Colbridge, employees of Temple University performing services in a department known as the Physical Plant Department of Temple University, whose responsibilities included the proper ordering of parts, supplies and services from approved vendors such as IVR, met with James McGinley and Anthony Nastasi and demanded the payment of money and other valuable consideration in return for their influence and agreeing to use their influence in the course of their employment at Temple University for the continued economic benefit of IVR.

10. Between June 1982 and October 1983, James McGinley and Anthony Nastasi, on behalf of IVR, conferred a monetary benefit and other things of value upon Michael Moan, George Wilson and William Colbridge in accordance with the demand referenced in Paragraph 9. James McGinley and Anthony Nastasi, on behalf of IVR, made payments in the approximate amount of $6,000 together with other things of value to Michael Moan, George Wilson and William Colbridge.

11. On dates unknown but prior to April 4, 1984, representatives of IVR, testified before a Federal Grand Jury for the United States District Court for the Eastern District of Pennsylvania regarding the activities and payments described in Paragraph 5 through 10 herein. The referenced testimony before the Federal Grand Jury was provided in cooperation with a United States Department of Justice investigation.

12. On or about April 4, 1984, the Federal Grant Jury before which representatives of IVR testified, returned a 21 count indictment, a copy of which was attached to the Complaint in this matter as Exhibit A, naming ten (10) employees of Temple University, including John J. Nardini, Thomas J. Siedzkowski, Charles Peck, Michael Moan, George Wilson and William Colbridge, as defendants. The trial of the referenced criminal matter was scheduled to commence on or about July 9, 1984.

13. The criminal trial of the defendants was scheduled to commence on July 9, 1984. It was anticipated that Messrs. McGinley and Nastasi would have testified during the trial. However, no trial was required as the several criminal defendants pleaded guilty or nolo contendere to various charges in the indictment.

14. The anticipated testimony of Messrs. McGinley and Nastasi would have been required, in the absence of a plea, to directly support three (3) of the 21 counts of the referenced indictment. Further, the testimony would have substantially contributed to the proofs relevant to an additional seven (7) counts of the referenced indictment.

The Division of Gaming Enforcement rested its case in this matter on the submission of the Stipulation of Facts (Exhibit J-1) and the admission into evidence of the aforementioned criminal indictment (Exhibit P-1). Testifying on behalf of the respondent, James T. McGinley explained the steps which he has taken to prevent any further involvement by the respondent corporation in activities such as those described in the Stipulation of Facts. According to Mr. McGinley, he bought out the ownership interest of Anthony Nastasi in February 1984, and he now holds 100 percent of the shares of the corporation, whose business is an air conditioning, refrigeration and heating wholesale supply house.

On behalf of the respondent, Mr. McGinley engaged the services of the accounting firm of Goldenberg and Rosenthall, and this firm provided assistance in locating a comptroller to be hired by the respondent. According to Mr. McGinley, these steps were taken with the intention of avoiding a recurrence of the conduct set forth in the Stipulation of Facts. In addition, Mr. McGinley's son now works in the shipping department and the respondent has hired a new sales manager to generate accounts.

Within one year, the respondent's accounts have increased from 300 to 1,800. The respondent no longer has its account with Temple University, which accounted for less than 20 percent of its business. According to Mr. McGinley, the respondent's projected gross income for 1985 is approximately $2.5 million.

Noting that he had testified before the Grand Jury and had cooperated with the Federal Prosecutors, Mr. McGinley stated that there has been no involvement with law enforcement either before or after the conduct set forth in the Stipulation of Facts. Mr. McGinley testified candidly that various Temple University employees had asked him for money in exchange for using their influence to steer business toward the respondent. Mr. McGinley had wanted the business and had paid the requested money, hoping to achieve an economic gain. He testified sincerely that if he were confronted with a similar request from a potential customer, he knows that it would be morally wrong to pay a kickback and he would not do so. He has learned from the previous mistake and he would not put himself, family or business through the results of such conduct again. In addition, Mr. McGinley testified that he has informed his employees that any employee who paid a kickback would be fired.

Also testifying on behalf of the respondent was Roger Zahn, who has been the respondent's comptroller since February 1984. Mr. Zahn, who has a bachelor's degree in accounting, has a total of 25 years experience as a comptroller. He determined that the respondent needed a system for the orderly transistion of bill payments. Mr. Zahn established a procedure for the flow of paperwork and for a check on prices.

According to Mr. Zahn, he is responsible for all incoming charges and for the payment of all bills. All checks are written by him and he will not write a check without a supporting document. These checks are then signed by Mr. McGinley or his son. It was the credible opinion of Mr. Zahn that the respondent's business is now conducted under generally accepted accounting practices.

It is undisputed that at one time the respondent had yearly billings to New Jersey casino hotels of approximately $100,000. The respondent had less than $10,000 in billings with these casino hotels in 1984, and the respondent will do only a few thousand dollars worth of business with the casino hotels in 1985. By letter of February 1, 1985 (Exhibit R-1), the Casino Control Commission notified the respondent that its casino service industry license expired on January 31, 1985. Since the respondent was not

conducting business of a regular and continuing nature, as defined by N.J.A.C. 19:43-1.2, the respondent was not required to file for renewal of its license.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq), participation in casino operations as a casino service industry licensee under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the licensee. Section 129(1) of the Act authorizes the revocation of licensure of any licensee for the commission of any offense or violation under the Act which would disqualify such licensee from continuing licensure.

Pursuant to Sections 92d, 86c(4), 86g and 129 of the Casino Control Act, the Commission may revoke licensure, or impose some other appropriate sanction, on the basis of a licensee's commission of an offense which would be inimical to the policy of the Casino Control Act and to casino operations even if such conduct has not been or may not be prosecuted under the laws of New Jersey. It is undisputed that the respondent conferred a monetary benefit upon various employees of Temple University upon their demand for payment of money in return for their agreement to use their influence in the course of their employment to confer an economic benefit upon the respondent. Such conduct is the equivalent to the criminal offense of commercial bribery, in violation of N.J.S.A. 2C:21-10(c), a crime of the fourth degree. Such conduct by a casino service industry licensee would justifiably erode the public's confidence in the integrity of the regulatory process, and thus, I **CONCLUDE** that such conduct is inimical to the policy of the Casino Control Act and to casino operations, pursuant to Section 86c(4) of the Act, even though such conduct was not prosecuted under the criminal laws of New Jersey, pursuant to Section 86g of the Casino Control Act.

Having so concluded, the issue for my resolution is what sanction, if any, should be imposed. The amount of business which the respondent now does with New Jersey casinos is minimal. The respondent and its chief officer wish to have the name of the business cleared from doubt. Following full cooperation with the United States Department of Justice, the respondent has retained an accounting firm and hired a full-

time comptroller to operate the business under generally accepted accounting practices. The assurance of the respondent' chief officer that its prior illegal conduct will not happen again is credible and entitled to great weight.

The undisputed conduct of the respondent involved pursuit of economic gain in a criminal manner. The cessation of this conduct and the institution of remedial and deterrent measures by the respondent should satisfy the need to maintain the public's confidence in the integrity of the legalized gaming industry. Having considered the risk to the public and to the integrity of gaming operations, the seriousness of the conduct, the respondent's explanation for its conduct and the corrective action taken by the respondent to prevent future misconduct, I **CONCLUDE** that a letter of reprimand is warranted, pursuant to Sections 129(8) and 130 of the Casino Control Act.

ORDER OF DISPOSTITION

Accordingly, it is **ORDERED** that the respondent Industrial Valley Refrigeration, Inc., be reprimanded by issuance of a letter of reprimand, which letter shall be made a permanent part of the Casino Control Commission's file of the respondent, pursuant to N.J.S.A. 5:12-130 and N.J.S.A. 5:12-129(8).

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 14, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 15, 1985
DATE

Bernadette F. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 17 1985
DATE

Ronald L. Parker/phc
OFFICE OF ADMINISTRATIVE LAW

bc

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INVENTORY OF EXHIBITS

Joint Exhibit:

J-1 Stipulations

For the Division of Gaming Enforcement:

P-1 Indictment

For the Respondent:

R-1 Letter from the Casino Control Commission, dated February 1, 1985

WITNESSES

For the Division of Gaming Enforcement:

None

For the Respondent:

James T. McGinley

Roger Zahn

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-147
REGISTRATION NO. 18563-40
OAL DOCKET NO. CCC 4602-84

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ROBERT JENKINS,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 9, 1985;

IT IS on this 5th day of August 1985, ORDERED that the initial decision is modified as follows:

(1) In light of the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c)(1), that portion of the initial decision considering whether the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary.

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Robert Jenkins is dismissed based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Robert Jenkins, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4602-84
AGENCY DKT. NO. 83-147

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
Petitioner,
v.
ROBERT JENKINS,
Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Robert Jenkins, respondent, pro se

Record Closed: September 27, 1984 Decided: November 13, 1984

BEFORE **VALERIE H. ARMSTRONG**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), filed a complaint on May 16, 1983, seeking to revoke respondent's casino hotel employee registration alleging that respondent's criminal convictions are inimical to the policy of the Casino Control Act and to casino operations. By letter dated May 23, 1983, respondent requested a hearing but asked that the hearing be deferred until he was released from incarceration. That request was granted by the Casino Control Commission (Commission) by letter dated June 6, 1984. On June 13, 1984, respondent requested that his case be activated.

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The Division's complaint alleges the following:

1. That on March 9, 1982, respondent was indicted by the Atlantic County Grand Jury resulting in his guilty plea to violations of N.J.S.A. 2C:18-2 (burglary) and N.J.S.A. 2C:20-3 (theft by unlawful taking); and

2. that on October 14, 1982, respondent was indicted by the Atlantic County Grand Jury resulting in a guilty plea to one count of burglary and one count of theft by unlawful taking; and

3. that on December 3, 1982, respondent was charged with violating his probation and was sentenced to the Yardville Youth Reception and Correction Center (Yardville).

A prehearing conference was held resulting in the entry of a prehearing order dated August 24, 1984, which order defined the following issues to be addressed at the hearing:

1. Are the convictions for violations of N.J.S.A. 2C:18-2 and N.J.S.A. 2C:20-3, per se disqualifying offenses pursuant to N.J.S.A. 5:12-86c?

2. In the event that the convictions constitute per se disqualifying offenses, can respondent demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-91d?

3. Are respondent's convictions of N.J.S.A. 2C:18-2, 2C:20-3, and his probation violation inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4)?

A hearing was held at the Ventnor City Municipal Building, Ventnor, New Jersey, on September 27, 1984.

FACTUAL FINDINGS

Respondent is an unmarried, 22-year-old casino hotel employee registrant. He has been employed for the past six months as a cook for Los Amigos Restaurant in Atlantic City, New Jersey.

Respondent has the following arrest and criminal background, none of which he disputes:

1. On March 9, 1982, respondent was indicted by the Atlantic County Grand Jury for violations of N.J.S.A. 2C:18-2 (burglary), N.J.S.A. 2C:20-3 (theft over $500), N.J.S.A. 2C:39-5(d)(possession of a weapon), and N.J.S.A. 2C:29-2a (resisting arrest) (P-4). The indictments arose out of an incident which occurred in Atlantic City, New Jersey, on February 14, 1982 when respondent was arrested by the Atlantic City Police Department for burglarizing Captain Starn's Restaurant. The Atlantic City Police Department investigation report revealed that the police recovered a box near the scene of the crime which contained a circular saw, AM/FM radio, two saw blades and weather stripping, all of which was allegedly in respondent's possession before he abandoned it (P-1). A criminal complaint filed as a result of this incident also alleges that respondent had a knife in his possession (P-1). (The only issue that respondent disputes about the information contained in the investigation report is that he alleges that he did not have a knife in his possession.) On March 22, 1982 respondent retracted his pleas of not guility to all four counts of the indictment, and entered a guilty plea to one count of burglary and one count of theft by unlawful taking (P-4). On April 30, 1982, respondent was sentenced on Count One (burglary) to probation for a term of one year on the condition that he serve four months in the county jail and be given credit for 13 days served. His sentence for Count Two was identical to and concurrent with Count One. He was ordered to pay a $25 penalty fee to the Violent Crimes Compensation Board on Counts One and Two. The remaining two counts were dismissed. At the time of his guilty plea, respondent was represented by an attorney (P-4).

2. On October 14, 1982, respondent was indicted by the Atlantic County Grand Jury for violations of N.J.S.A. 2C:18-2 (two counts of burglary), N.J.S.A. 2C:20-3 (theft over $500), N.J.S.A. 2C:20-3 (theft of at least $200 but not in excess of $500)(P-2). The indictment arose out of an incident which occurred on September 3, 1982, in Hamilton Township, New Jersey, when respondent was arrested for burglarizing a condominium. When the police pursued respondent, he complied with their request to stop, at which time he was arrested and advised of his rights. Respondent then admitted that he had broken into two apartments from which he removed some gold chains (P-3). On November 15, 1982, respondent retracted his not-guilty pleas and entered a plea of guilty to one count of burglary and one count of theft by unlawful taking (in excess of $500). He was sentenced on both counts to concurrent sentences to be served at Yardville for an indeterminate term not to exceed five years, with credit to be given for five days served. The remaining counts were dismissed, and respondent was ordered to pay $25 on two counts to the Violent Crimes Compensation Board (P-2).

3. On December 3, 1982, respondent entered a guilty plea to violation of probation and was sentenced on "count 1 to Yardville Youth Reception and Correction Center, for an indeterminate term not to exceed 5 years to run concurrent with count 2 of Ind. 10-456-82; count 2 to Yardville for an indeterminate term not to exceed 18 months to run concurrent with count 1" (P-4). The reasons given for the sentencing by the Honorable Robert Neustadter, J.S.C. were the following:

> Because of defendant's extensive and serious prior record as a juvenile and as an adult, and considering this offense, this sentence is marginally acceptable as recommended in the plea agreement. Only his youth induces the Court to opt for this indeterminate sentence to the Youth Complex rather than a State's prison term. A sentence of some incarceration however is definitely required for purposes of punishment, as a deterrent, for rehabilitation and so as not to deprecate the seriousness of the offenses (P-4).

4. After being released from Yardville in September 1983, respondent went to work for the Bala Motel in Atlantic City, New Jersey. While on the job, he was arrested in February 1984 and was confined to the Atlantic County Jail for three months. A witness had identified responent from an old photograph utilized in a photo line-up in January 1984 (which photo did not resemble respondent at the time the offense occurred in December 1983) as being the suspect in a robbery. In February 1984, the witness who had been somewhat unsure of her selection of respondent's picture in January 1984, selected respondent's photo from a line-up, claiming she was sure respondent was the suspect. When the witness ultimately could not select the respondent out of an in-person line-up, the Atlantic County Prosecutor administratively dismissed the matter.

5. At the hearing, respondent volunteered the information on cross examination that he had been arrested and convicted as an 17 year-old juvenile for armed robbery and disorderly conduct.

Respondent attributes his February 14, 1982 and September 3, 1982 arrests to taking pills and drinking alcohol which caused a change in his personality. With regard to the September 3, 1982 incident, respondent noted that the home he broke into was owned by a friend, and he does not remember the specifics of the incident, but just recalls being "locked up", stating he "lost control."

Respondent credibly testified that he understands that the two arrests in 1982 were serious incidents and something he will regret for the rest of his life. While his confinement at Yardville was one of the worst periods of his life, he feels he benefited by the experience. He consulted with a psychiatrist, enrolled in Alcoholic's Anonymous and Narcotic's Anonymous and underwent group and individual counselling. He completed his high school degree at Yardville (R-3). Prior to being sentenced to Yardville, he had signed himself into two drug rehabilitation programs in Atlantic City, New Jersey. Respondent states that he no longer takes pills, smokes reefers or drinks alcohol.

When respondent was released from Yardville, he assumed the job at the Bala Motel and also took a second job at Aubrey's Restaurant. He worked these jobs until his February 1984 arrest.

In addition to his present job working at Los Amigos Restaurant, respondent is attending the Atlantic County Vocational and Technical School studying masonry, carpentry, plumbing and electrical work, in order to be placed into a union apprentice program. He resides with his mother and youngest sister and wants to retain his casino hotel employee registration because he needs to make more money. Respondent stated that he grew up in a "tough part" of Atlantic City, New Jersey, and he has been trying to better himself for the past two years.

Prior to his confinement at Yardville, respondent had the following employment history:

1. He worked at Caesar's Hotel Casino in 1980 as a houseman cleaning public areas and hallways. He was terminated from this job when he put a coin into a slot machine when he was leaving at the end of his workday.

2. He worked as a houseman and bar porter at the Claridge Hotel Casino for one and one-half years during 1981 and 1982, leaving this employment when he was incorcerated.

Richard Allen Jenni is a parole officer for the state of New Jersey, Department of Corrections. He has been employed as a parole officer off and on from 1969 to the present. He has been respondent's parole officer since September 1983. He sees respondent at least once a month and sometimes more often. Mr. Jenni's current employment involves his assignment to those persons who are the most likely candidates for rehabilitation. As a parole officer, Mr. Jenni has had considerable experience with what he describes as angry persons and ugly situations", particularly when he was working for the Utah State Prison. Mr. Jenni feels that respondent is rehabilitated for the following reasons:

1. Respondent's February 1984 arrest was a true test of his recently acquired maturity and self-control in that as a result of what Mr. Jenni referred to as "poor police work," respondent was wrongfully arrested and was confined to jail for a period of three months. While respondent had a right to be angry about the situation, he did not display the anger and, rather, waited patiently in jail and tried to deal with the situation rationally.

2. Since being released from Yardville on parole, respondent's conduct has been beyond reproach. Mr. Jenni has seen no evidence of respondent's utilization of drugs or alcohol. He has not been involved in any additional criminal behavior and there is no indication that he will engage in future criminal behavior. Respondent has reported faithfully to Jenni and Jenni does not feel he poses any threat to the community. Jenni would trust respondent in his home and with his children.

3. Respondent's attendance at the Atlantic County Vocational and Technical School and his desire to better himself financially is extremely significant.

4. Jenni noted that he would not risk his own credibility by attending the hearing to testify on respondent's behalf if he did not feel that respondent was truly rehabilitated.

At the hearing, respondent testified that he was under the impression that his registration, which he has held for four years, had expired. At my request, the deputy Attorney General inquired into the situation and confirmed by letter to respondent, dated September 28, 1984, that his registration had not expired (C-1).

DISCUSSIONS AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86c(1) provies that a registrant may be disqualified from registration if he has been convicted of certain criminal offenses known as statutory disqualifying offenses. Specifically included among the enumerated offenses are second degree violations of N.J.S.A. 2C:18-2, and N.J.S.A. 2C:20-3 (if the theft was of the second or third degree). N.J.S.A. 2C:20-2b(2) provides that theft of property with a value of $500 or more constitutes a crime of the second degree. I **CONCLUDE** that respondent's conviction on March 22, 1982 and October 27, 1982, of violations of theft by unlawful taking in the second degree (N.J.S.A. 2C:20-3) constitute statutory disqualifying offenses pursuant to N.J.S.A. 5:12-86c(1). The proofs are inadequate to establish whether the burglary convictions were of the second degree. Neither the indictment not judgments of conviction state that the crime was of the second degree as defined by N.J.S.A 2C:18-2b.

The next issue to be considered is whether respondent has rehabilitated himself pursuant to N.J.S.A. 5:12-91d. It is disturbing that respondent was convicted on two occasions of serious crimes as a result of incidents occurring a mere seven months apart. Respondent's explanation of the circumstances surrounding the offenses, i.e., his criminal behavior resulted from his utilization of drugs and alcohol, does not in any way excuse his behavior, but is somewhat relevant as it relates to the issue of rehabilitation, with regard to his ability to remain free of the use of both drugs and alcohol. In assessing whether respondent has affirmatively demonstrated his rehabilitation, I have considered the negative impact of respondent's unfortunate probation violation resulting in his incarceration at Yardville for a period of nine months. I find the following factors to be positive evidence of respondent's rehabilitation:

1. He has not been convicted of any criminal behavior since October 1982.

2. He was motivated enough to pursue and complete his high school education while confined at Yardville.

3. He has succesfully participated in counseling while in prison and that he has attended various drug and alcohol rehabilitation programs which have resulted in respondent removing free of the use of drugs and alcohol.

4. He has maintained consistent employment since his release from Yardville (other than during the period that he was wrongfully confined in the Atlantic County Jail for three months).

5. His mature and rational reaction to being wrongfully incarcerated in the Atlantic County Jail for three months during 1984.

6. His pursuit of vocational training at the Atlantic County Vocational and Technical School.

7. His admission and acknowledgment of wrongdoing which he considers to be serious and which he will regret for the rest of his life. It should be noted that while respondent explained his behavior as resulting from drug and alcohol use, his explanation of the circumstances was not presented in a self-serving manner to excuse his behavior.

8. The very favorable testimony of Richard Jenni, respondent's parole officer, evidencing respondent's rehabilitation since his release from Yardville.

I have given no weight to respondent's juvenile record, since that issue was not identified as an issue to be addressed at the hearing and the evidence presented as to his juvenile record was minimal.

In assessing whether respondent has rehabilitated himself, I have considered the significance of respondent being on parole as a result of having violated his probation in December 1982. Parole is the method by which a prisoner is permitted to serve the remaining portion of his sentence outside prison with certain conditions which must be followed in order to preclude a revocation of parole, and eventual reincarceration. In re Clover, 34 N.J. Super. 181, 188 (App. Div. 1955). If respondent was not on parole, considering all of the rehabilitative factors set forth directly above, there would be no question but that he is rehabilitated for purposes of retaining his casino hotel employee registration. While parole technically permits a parolee to serve part of his sentence outside the prison walls, there are built-in safeguards in the event the parole is violated, i.e., revocation of parole as permitted by N.J.S.A. 30:4-123.60. The question is whether when considering the rehabilitative factors cited herein, whether there is any purpose to be served by denying respondent his registration simply because he is on parole. I **CONCLUDE** that no such purpose exists. If respondent violates his parole, his parole will be revoked, reincarceration will occur, thus effectively removing him from participation in the gaming industry. The purpose of a registration revocation proceeding is to remove from the gaming industry those persons who are inappropriate or unfit to work in the industry, not to punish a registrant who has been guilty of criminal behavior. In considering the rehabilitative factors cited herein, and having had the opportunity to observe respondent's credible and sincere testimony as to his intentions to continue to improve his life, and it appearing that it is unlikely that respondent will engage in further criminal behavior, I **CONCLUDE** that he has rehabilitated himself, notwithstanding that he is still on parole. I note, however, that this conclusion is based upon the unique facts and circumstances of this case.

Finally, the Division has argued that respondent's convictions and his probation violation are inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4). In considering the question of whether respondent's acts are inimical, I have considered the same factors addressed as to the issue of rehabilitation. While respondent's convictions clearly would have been inimical at the time that the convictions occurred, the passage of time has reduced the issue of inimicality to the point where it is virtually nonexistent. The Commission has identified some of the factors to be considered regarding inimicality, which factors are virtually identical to the rehabilitative factors set forth in N.J.S.A. 5:12-90h, namely, the nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct from the time of the offense to the present. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979). I therefore **CONCLUDE** that respondent's convictions and his probation violation are not inimical to the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4).

ORDER OF DISPOSITION

It is therefore **ORDERED** that petitioner's complaint to revoke respondent's casino hotel employee registration is hereby **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 13, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Aeknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 15 1984
DATE

Ronald L. Tarkenton
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Atlantic City Police Department (ACPD) Investigation Report (February 14, 1982); ACPD Arrest Report (February 14, 1982); Complaint-State of New Jersey v. Robert Jenkins (February 14, 1982) (6 pages including duplicates of all three documents)

P-2 Four count indictment No. 10-456-82-A, Judgment of Conviction and Order for Commitment (December 8, 1982) (8 pages)

P-3 Hamilton Township Police Department (HTPD) Arrest Report (September 3, 1982); HTPD Investigation Report (September 3, 1982); Judgment of Conviction and Order for Commitment (February 25, 1983); Complaint - State of New Jersey v. Robert H. Jenkins (September 3, 1982) (5 pages)

P-4 Four count indictment No. 833-81-J-A; Judgment of Conviction (March 22, 1982); Sentence Worksheet (December 3, 1982); Judgment of Conviction on Violation of Probation (December 8, 1982) (11 pages)

R-1 Respondent's High School Diploma, dated April 25, 1983

R-2 Referral re JTPA eligible applicant

R-3 Atlantic/Cape May Consortiuum Participant Handbook

R-4 Career Advancement Program Registration Form

C-1 Letter from Division of Gaming Enforcement to respondent, dated September 28, 1984

WITNESS LIST

FOR PETITIONER:

None

FOR RESPONDENT:

Robert Jenkins

Richard Allan Jenni

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-43
OAL DOCKET NO. CCC 2042-84
LICENSE NO. 23213-21

APPLICATION OF ELMIRA Y. JONES
FOR RENEWAL OF HER CASINO
EMPLOYEE LICENSE

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 10, 1985,

IT IS on this 2nd day of AUGUST 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Elmira Y. Jones, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2042-84

AGENCY DKT. NO. 84-EA-43

ELMIRA Y. JONES,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Peter Bruso, Esq., for petitioner (Jacobs, Todd & Bruso, attorneys)

Ralph Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: March 21, 1985 Decided: May 1, 1985

BEFORE **JEFF S. MASIN,** ALJ:

Petitioner Elmira Y. Jones seeks renewal of her casino employee (blackjack dealer) license. By letter of January 17, 1984, the Division of Gaming Enforcement opposed renewal. Ms. Jones requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Valarie Armstrong on August 6, 1984, and a prehearing order was issued on August 20, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin on March 21, 1985, at the Egg Harbor City Municipal Court.

CONCLUSION

For the reasons expressed below, I **CONCLUDE** that the license should be granted. Although the case is close, I am convinced that the petitioner did not intentionally fail to disclose her arrest and I am further convinced by clear and convincing evidence that she has the requisite good character, honesty and integrity for licensure.

THE ISSUE

The case revolves around Ms. Jones' arrest by the Atlantic City police on February 20, 1983. She was charged with violating N.J.S.A. 2C:12-1(b)(5)(a) in that she attempted to cause bodily injury to a police officer acting in the performance of his duties. In addition she was charged with violating N.J.S.A. 2C:29-2 in that she "purposely prevent a law enforcement officer . . . from effecting a lawful arrest by fighting him." As will be noted below, the Atlantic County Prosecutor's office remanded the matter to the Municipal Court for disposition on simple assault and resisting arrest charges, violations of N.J.S.A. 2C:12-1(a) (5) and N.J.S.A. 2C:29-2, respectively. On February 10, 1984, Ms. Jones was found not guilty of each charge.

The Division contends that Ms. Jones purposely and intentionally failed to include her arrest of February 20, 1983, on her renewal application, which was filed with the Commission on February 28, 1983. A willful and intentional failure to disclose such information, which is clearly material to the licensing question, would be a violation of N.J.S.A. 5:12-86(b) and would require the denial of licensure. In addition, the Division argues that such a failure to disclose adversely affects the ability of Ms. Jones to meet the requirement of N.J.S.A. 5:12-89(b)(2), as incorporated by N.J.S.A. 5:12-90, that the applicant have a reputation for good character, honesty and integrity.

THE EVIDENCE

As part of its proofs in this matter, the Division of Gaming Enforcement placed in evidence the Municipal Court Complaint filed in the Atlantic City Municipal Court against Ms. Jones by Officer D. McClausland of the Atlantic City Police Department, as well as the officer's police report, dated February 20, 1983. According to the report (the officer did not testify at the hearing), the officer was summoned to a cab parked in the City Hall parking lot at 3:30 a.m. on February 20, 1983. The cab driver

advised Officer McClausland that the woman in the back seat had passed out "before telling him her full address and that he needed assistance with her." When McClausland attempted to awaken the passenger, who was Ms. Jones, she became "extremely violent" threw a drinking glass at the officer and then, when he attempted to get her out of the cab, she continued to kick him about the legs and picked up a piece of broken glass, cutting the officer slightly on the right wrist. Ms. Jones continued to struggle even after she was taken into the police station.

Elmira Jones testified that she is employed at the Golden Nugget as a dealer and has worked there for two and a half years. On February 20, 1983, she had gone after work to the Easy Street Pub in Atlantic City. She ate something and had some drinks and was there for about one and a half to two hours. She then called a cab for the purpose of going to her aunt's house to pick up her son. She felt all right, but admitted that she had a couple of drinks and while she was in the cab apparently something happened to her. The last thing she could recall was getting into the cab and the next she knew she woke up in jail, handcuffed. She remembers nothing else about what had happened. When she awoke she did not know why she was in the cell and she began crying and screaming. Nobody else was in the cell, however, Wesley Hawkins, Jr., who was a police officer acting as the turnkey that night, heard her screaming and came back to her cell. Hawkins, who testified that he has known Ms. Jones for about 23 years and went to school with her, came into the cell and asked her why she was there. She said she didn't know why and Jones, who had just come on duty, took off the handcuffs and calmed Ms. Jones down. He then went out to the desk and determined that Jones had been arrested on charges of aggravated assault on a police officer. When he advised Jones of this she had no idea what he was talking about. Hawkins then went to call Ms. Jones' father, an Atlantic City police officer. Jones could not recall whether there was any discussion about bail, but her father came to the police station and she was released and went home sometime in the morning. She was fingerprinted. When she left the police station no papers of any kind were given to her and she did not recall signing any forms nor answering any questions about the incident. Thereafter, she went to see Harry Goldenberg, Esq. She knew Goldenberg from before this time and went to see him two days after the incident. She could not believe that she had done anything like what the officer had said, but she knew she needed a lawyer. She talked to Goldenberg, who advised her that he believed that the matter could probably be taken care of in the prosecutor's office since the officer had not been seriously injured.

Ms. Jones testified that she eventually learned from Atlantic City Police Officer Bahadour Ali, a friend for some nine years, that the matter was an indictable offense. However, according to Ms. Jones, it was her understanding from Goldenberg that the matter could be downgraded or dismissed without her having to go back to court.

The witness testified that she had received her renewal application about a week or two before the February 20 incident. She filled it out after receiving it, but did not sign it because the signature had to be notarized. She did sign it on February 27, 1983, before the time that she had it notarized. She then submitted the application on the deadline of February 28.

Ms. Jones acknowledged that sometime after the incident she received a call from an investigator from the Division of Gaming Enforcement who asked her if she had ever been arrested. She replied "no." When he mentioned the date of February 20 to her she said that she thought that that matter had been dismissed and that she did not understand that she had been arrested at that time. The investigator mentioned that there was a bench warrant out for Ms. Jones because of her failure to appear in court on the matter. She told him that she knew nothing about this. Apparently she had moved and had not received a notice for court.

As noted above, the matter was indeed tried in the Atlantic City Municipal Court in February 1984 and Ms. Jones was found not guilty.

The witness testified that she was aware of the requirement to advise the Commission of any arrests. She had filled out the application prior to February 20 and indicated that she had not been arrested and she did not read the form over before she signed it on February 27. She had no intention of deceiving the Commission.

On cross-examination Ms. Jones said that she thought about the arrest as if it did not happen. She thought the charges were fake and at the time did not think she would have to go to court because the attorney had said that the matter could be taken care of in the prosecutor's office.

During cross-examination it was noted that Ms. Jones had previously had a incident in which she was charged with malicious mischief on the telephone. However in

connection with that matter she was not arrested, but merely received a summons. She did note that matter as a "charge" on her first application form.

The witness acknowledged that her father had told her that the charge against her was serious and had told her to go to a lawyer.

Officer Wesley Hawkins, Jr. testified and confirmed the applicant's testimony about her condition when he first saw her in the cell. He also noted that she had been released on her own recognizance (ROR). Officer Hawkins noted that while it was ordinarily the practice to give someone leaving jail on bail some papers, including a copy of the Municipal Court Complaint, sometimes the "green sheet," which is the copy which is given to the defendant, does not come back to the area where individuals are released in time for it to be given to them before they leave. He mentioned that this did happen occasionally, but that the system has now been changed. Officer Hawkins was not present when Ms. Jones was released.

In addition to her testimony Ms. Jones presented character references which generally describe her of being of good character and trustworthy. These came from the assistant shift manager at the Golden Nugget, as well as from the assistant to the vice president of Stockton State College, who formally was a teacher of her's at Atlantic Community College and has known her for many years and the assistant director of the Office of Student Services Career Planning and Placement at Stockton State, who also was aware of her activities at Atlantic Community College. Additional reference came from a priest who has been associated with her.

DISCUSSION

This case presents difficulties because it appears that Ms. Jones has, up until the time of the filing of this application, been a good citizen with little contact with law enforcement agencies. I **FIND** that the incident involved, for which Ms. Jones was found not guilty, does not, in and of itself, constitute a basis for denying her licensure. It is unclear exactly what happened to Ms. Jones, however, the incident seems out of character, aberrational and of no significance in terms of her fitness for license.

The remaining ground asserted for denying renewal relates to Mr. Jones' alleged intentional failure to disclose her arrest. According to Ms. Jones' testimony she did not list the arrest because she had already filled out the form, thought the matter was

going to be disposed of without going court, did not read the form over before she submitted it and had no intention of deceiving anybody. Having given the matter much thought and having considered the credibility of Ms. Jones, I have concluded that while the case is close that Ms. Jones has established to my satisfaction by clear and convincing evidence that she has the good character, honesty and integrity required for licensure and has further established by a preponderance of the evidence that she did not intend to deceive anyone when she inadvertently failed to disclose the arrest. While I **FIND** that she certainly was aware that she had been in police custody in a cell, handcuffed and fingerprinted, as well as aware that a charge was pending against her, given the fact that she really did not recall anything about the incident and that she did not think that the charge that she was told about was true, as well as the fact that this occurred after she filled out most, if not all, of the form, I **CONCLUDE** that any failure to disclose here was inadvertent and negligent, but not intentional and for the purpose of deception. I am unconvinced that Ms. Jones did not disclose the arrest out of fear that knowledge of the arrest on the part of the Division or Commission might lead to her not being licensed or a delay in her licensing renewal. While not saying that she was unaware of the fact that she had been arrested, I merely conclude that she did not have the intention of purposely withholding the information from the Commission. Such an intent and purpose is required before a non-disclosure can result in denial of licensure. In the matter of Harl Lee Cooper, OAL DKT. CCC 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980).

As noted, I believe that the facts and circumstances here indicate a close question. It is necessary to determine the mind of Ms. Jones at the time that she handed in her application. Given the circumstances and her overall credibility, as well as the excellent character references concerning her, I am not willing to find that she acted improperly in this matter.

For the reasons expressed, it is **ORDERED** that Ms. Jones' application for renewal be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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OAL DKT. NO. CCC 2042-84

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 1, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

May 2, 1985
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

MAY 06 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

EVIDENCE LIST

On behalf of petitioner:

P-1 Investigation Report, dated February 20, 1983

P-2 Municipal Court Complaint, City of Atlantic City, State of New Jersey v. Jane Doe; AKA Yvonne E. Jones

P-3 Letter of August 31, 1984, from Bruce Einhorn

P-4 Letter of September 11, 1984, from G. Bruce Ward

P-5 Letter of September 18, 1984, from Charlotte L. Hudson

P-6 Letter of October 5, 1984, from Reverand Monsignor Lawrence P. Boyle

On behalf of respondent:

R-1 Employee License Renewal Application, dated February 27, 1983

R-2 Certified copy of complaint and disposition

R-3 Original application for licensure (withdrawn)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EL-11
OAL DOCKET NO. CCC 7457-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
SAUL KANE,	:	
Respondent	:	

A hearing in this matter having been conducted in the Office of Administrative Law and an initial decision by the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and respondent having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of November 6, 1985,

IT IS on this 21st day of November 1985, ORDERED that respondent Kane is declared an excluded person pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et. seq. substantially for the reasons stated in the initial decision, which is incorported herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that respondent Kane not be permitted to enter any portion of the premises of any casino hotel facility in Atlantic City; and

IT IS FURTHER ORDERED that a copy of this order shall be served upon the respondent, the Office of Administrative Law, the Division of Gaming Enforcement, and the authorized agents of all currently operating casinos in New Jersey within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

By: Dennis Daly
Dennis Daly
Senior Assistant Counsel

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7457-84

AGENCY DKT. NO. 84-EL-11

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

SAUL KANE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Paul A. Vagianos, Deputy Attorney General, at the prehearing conference); (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Harry A. Goldenberg, Esq., for the respondent (Goldenberg, Mackler & Sayegh, P.C., attorneys)

Record Closed: June 28, 1985 Decided: July 26, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, seeks to have the name of Saul Kane, respondent, placed upon the Casino Control Commission's (Commission) list of persons who are to be excluded or ejected from any licensed casino, pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq. More specifically, the Division alleged that the respondent is a career criminal offender, that he is an associate of career or professional offenders, that he has been convicted of a criminal offense which is punishable by more than six months in

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prison, and that the respondent's presence in a licensed casino would be inimical to the state or of licensed gaming. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its petition with the Commission on April 5, 1984, in which it also sought the immediate placement of the respondent's name upon the exclusion list. By letter dated June 28, 1984, the Commission notified the respondent of the pending action and that it would conduct a preliminary hearing. By order dated September 28, 1984, the Commission placed the respondent's name upon the exclusion list pending final disposition of this matter. By letter filed with the Commission on September 28, 1984, the respondent requested a hearing. On October 3, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 24, 1984, before former Administrative Law Judge Norman D. Smith. The matter was heard on January 14, 1985, and on June 28, 1985, when the record was closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Kane currently resides in Ventnor, New Jersey. Previously, he was a resident of Longport.

The respondent is employed as a salesman by the Oz-Lite Chemical Corporation, in Sharon Hill, Pennsylvania. He sells chemicals to janitorial service operations. Norman Gover is the president of Oz-Lite, which is a corporation. The respondent is neither a stockholder nor an officer in the corporation. The respondent's primary sales area consists of Philadelphia, and his customers do not work within the New Jersey casino industry.

On September 19, 1977, the respondent and others were indicted in the United States District Court for the District of New Jersey on charges of violations of 18 U.S.C. § 1951 and § 1952, two counts of interference with commerce by extortion and conspiracy to commit extortion (P-6). These charges emanated from demands made to an owner of a

bakery for cash payments in exchange for an agreement not to organize the employees of the bakery into a union. The allegations also included threats of labor difficulties. The respondent was tried by a jury and was found guilty of the charges. On May 12, 1978, the respondent was sentenced to three years' imprisonment on each count, the terms to run concurrently (P-7). On April 18, 1980, the District Court vacated the imposition of the sentence of imprisonment, imposed a suspended sentence and placed the respondent on five years' probation (P-7).

On June 1 and again on December 13, 1978, at the request of the New Jersey State Police security personnel, respondent was ejected as a player from the casino of Resorts International Hotel, Inc. (P-1, P-2 and P-3).

On September 22, 1981, Mr. Kane was arrested by the Atlantic City Police Department as he stood outside of the Easy Street Pub in Atlantic City, and was charged with violations of N.J.S.A. 2C:33-2a, disorderly conduct, and N.J.S.A. 2C:29-2a, resisting arrest (P-4). Nicholas Virgilio was also arrested on the same date and at the same location. On January 13, 1982, the Atlantic County Prosecutor's Office dismissed the charges of resisting arrest, pursuant to a plea agreement, and remanded the disorderly persons charge to the Atlantic City Municipal Court. Ultimately, the respondent pled guilty to a disorderly persons offense, i.e., fighting, and was fined $125.00. The circumstances underlying this matter were in dispute and will be discussed, infra.

On September 1, 1982, an action was initiated against the respondent which charged him with a violation of the terms and conditions of his probation imposed because of his extortion conviction (P-7). The action alleged 27 separate violations. On September 28, 1982, U.S. District Court Judge John F. Gerry found the respondent guilty of a violation of probation, vacated the order of probation and ordered imprisonment for a period of three years. The respondent was incarcerated for a period of 14 months from October 8, 1982 until his release on December 6, 1983. The respondent is currently on parole until October 6, 1985. The terms and conditions of his current parole include that he not associate with persons who have a criminal record. Although the Division did not offer evidence which set forth the basis for Judge Gerry's findings of a violation of probation, the respondent testified that the basis was a single association with Nicodemo Scarfo during a 31-month period.

Since Mr. Kane's release, he has been present in several casinos as a player. More specifically, the respondent has been observed in the Tropicana Hotel Casino, the Claridge Hotel/Casino and the Sands Hotel Casino (P-8). He is a cash player and was rated as such by the Sands. Also, he received complimentary services from the Claridge.

Mr. Kane testified that he has known Lawrence Merlino on a social basis for approximately five to ten years. Further, Mr. Merlino was formerly a customer at the My Way Lounge in Atlantic City, which the respondent owned prior to 1980. The respondent believes that Mr. Merlino is employed in the steel rod business.

The respondent also testified that he knows Nicholas Virgilio on a social basis. The respondent dealt with Mr. Virgilio as a customer, when the respondent was in the bail bond business.

The respondent testified that he has never worked for Nicodemo Scarfo.

The parties stipulated that Charles Warrington visited Mr. Kane at the respondent's residence on February 25, 1982.

Following Mr. Warrington's departure from the respondent's residence on February 25, 1982, the New Jersey State Police conducted a search and confiscated papers on which sports bets were recorded. The respondent testified that these were bets made by himself on football games during 1979.

Mr. Kane asserted his Fifth Amendment right to silence in response to questions posed by the deputy attorney general, which concerned his knowledge of Philip Leonetti, Salvatore Merlino, Charles Warrington and Nicodemo Scarfo. The respondent also asserted his Fifth Amendment right to silence with regard to questions concerning any association between Philip Leonetti and Nicholas Virgilio, whether the respondent had ever heard of the Bruno crime family, and whether the respondent had ever arranged business partnerships between organized crime figures and others. The respondent testified that he asserted his Fifth Amendment privilege by reason of potential reincarceration as a result of parole violations in light of the fact that he had previously been incarcerated for a violation of probation.

Salvatore Merlino was preliminarily placed on the exclusion list on May 31, 1984. Lawrence Merlino and Philip Leonetti were preliminarily placed on the exclusion list on February 2, 1983. Nicholas Virgilio was permanently placed on the exclusion list on September 10, 1981. Nicodemo Scarfo was permanently placed on the exclusion list on July 11, 1984. Charles Warrington was preliminarily placed on the exclusion list on February 22, 1983.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident at the Easy Street Pub and the respondent's relationship, if any, to organized crime.

The respondent testified to the circumstances underlying the incident at the Easy Street Pub on September 22, 1981. More specifically, Mr. Kane stated that he was at the bar with a date. He did not know Richard Annibali, and he was not with Nicholas Virgilio. However, the respondent testified that he knew Virgilio. Also, the respondent testified that he observed the incident inside the bar and that Virgilio was not involved in a fight. However, when all persons were outside the bar, the police attempted to arrest Virgilio for involvement in a fight. The respondent believed this was inappropriate and expressed his feelings in a strong manner. As a result, he was arrested. Thereafter, respondent pled guilty to the disorderly persons offense as a means of "taking the easy way out."

The Division offered the narrative in the investigation report prepared by officers of the Atlantic City Police Department (P-4). Essentially, the report corroborates fully a portion of the respondent's testimony concerning the incident. More specifically, the report corroborates the respondent's testimony of when, where and why he was arrested. Further, the report does not contradict the remainder of the respondent's testimony with regard to the incident. Therefore, I am persuaded to believe the respondent's version of the incident. I so **FIND.**

With regard to the respondent's purported relationship with organized crime, the Division offered Michael McLaughlin, a Detective Sergeant First Class with the New

Jersey State Police. The detective has been employed by the State Police for the past 19 years. During the first five years of his employment he was assigned to road patrol. During the next four years he served as an undercover agent in the Organized Crime Bureau. More specifically, he was assigned to the southern portion of the state, with emphasis on Atlantic City, for the purpose of developing sources and information which would lead to criminal prosecution of traditional organized crime groups. The detective testified that traditional organized crime groups consist of persons with an Italian heritage who are organized for financial gain through criminal activities. In 1975 the detective served as an intelligence officer with the Intelligence Bureau, Southern Unit, which covered the seven southern counties. Following passage of the casino referendum, concentration in this area was in Atlantic City. From 1980 to 1982 the detective was assigned to the Division of Gaming Enforcement, where he formed and supervised a squad of five to eight people who investigated labor unions. In 1982, the detective returned to the Organized Crime Bureau where he is currently the supervisor.

The detective holds a bachelor's degree in criminal justice and a master's degree in administration. During his tenure with the New Jersey State Police he has received training in organized crime structure and investigation from the New Jersey State Police, the Federal Bureau of Investigation, and other law enforcement agencies.

The detective identified the sources of information upon which he relied in formulating various opinions to which he testified. More specifically, he relied upon his personal experiences as a State Police officer, information derived by other members of the State Police, information accumulated by other law enforcement agencies, including the Federal Bureau of Investigation, State Commission of Investigation and various other law enforcement agencies of national, state and local jurisdictions, information received from persons in the business community, information received from persons in the general community and information received from confidential informants. The opinions of the detective are based upon the same information as relied upon by other recognized experts in the field of organized crime.

The detective identified a traditional Italian crime family as a group of individuals who associate together to engage in organized criminal endeavors for financial gain. The structure of the organization consists of a boss and underboss, caporegimes, soldiers and associates. Caporegimes supervise groups of soldiers. With the

exception of associates, all are "made members," which means that they have committed certain criminal acts, including murder. Associates, i.e., criminal associates, are individuals who engage in criminal activities with members of organized crime, i.e., they participate in and have a positive responsibility in carrying out criminal activities.

Although the detective's testimony was opposed by the respondent, the preceding portion was not refuted and was credible, believable and persuasive, and is thus **FOUND AS FACT.**

The detective further testified to the makeup of the organized crime family in the southern part of the state. This crime group is referred to as the "Bruno" crime family, which is named after the late Angelo Bruno. The family's jurisdiction is primarily in the greater Philadelphia and South Jersey area. Nicodemo Scarfo is the boss of the family. Carmine "Chickie" Merlino is the underboss. The detective also identified Charles Warrington, Philip Leonetti, Lawrence Merlino, Nicholas Virgilio and Anthony DePasquale as members and soldiers of the Bruno crime family. Further, the detective identified the respondent as a criminal associate of the Bruno crime family.

Saul Kane first became known to the detective during the late-1960's. Also, he became familiar with the respondent during the early-1970's, when the respondent was a bail bondsman in Atlantic City. The detective became very familiar with the respondent during the investigation of the respondent's activities which led to his indictment for extortion in September 1977 (P-6), when the detective assisted in the federal investigation and testified before a federal grand jury. Also, the detective arrested the respondent in 1977 for unpaid traffic tickets.

The detective further testified that, in his opinion, the respondent associates with members of organized crime. This opinion was based upon the detective's personal observations of the respondent in various restaurants, bars, etc., in the presence of Anthony DePasquale, Lawrence Merlino, Philip Leonetti, Nicholas Virgilio, and others; information, including surveillance reports, from state, federal and local (municipal and county) law enforcement agencies; and the respondent's criminal record history, including his incarceration by reason of his association with Nicodemo Scarfo.

The detective also opined that Mr. Kane is a criminal associate of the Bruno family. This opinion was based upon all the information previously identified as well as the results of ten years of electronic surveillance conducted by various law enforcement agencies. More specifically, the respondent is a criminal associate of and takes orders from Lawrence Merlino, Salvatore Merlino and Philip Leonetti. Further, the respondent has had a criminal association with Nicholas Virgilio and Joseph Altomari.

The detective also believes that the respondent is active currently as a criminal associate of the Bruno family. More specifically, the respondent has been involved in bookmaking, loansharking, narcotics and prostitution with and on behalf of the previously named persons. This opinion was based upon the fact that the respondent was arrested after a search of the respondent's residence by State Police during February 1982 immediately following Warrington's visit. As a result of the search, papers with sports bets upon them were discovered. The respondent was never charged or prosecuted for any criminal misconduct as a result of the search. The detective also based his opinion upon information received purportedly from confidential informants. Nevertheless, although the detective has instructed his staff to pursue vigorously any investigation of Mr. Kane, no criminal proceedings have been initiated against the respondent. The detective was also of the opinion that, although the respondent's original sentence for his extortion conviction was reduced from a three-year period of incarceration to probation as a result of the respondent's open heart surgery, which had been the subject of a court inquiry and was corroborated by hospital records, that the respondent had not actually undergone the surgery and had committed a fraud for purposes of sentencing.

Although the respondent did not offer any rebuttal to the detective's testimony, it is essential to assess the witness's credibility and the believability of his testimony. Initially, the detective's position in this matter must be recognized. He is an employee of the State Police, which is a sister agency of the petitioner. In addition, the detective exhibited a perceptible degree of personal bias against the respondent. This was most evident when the detective rendered his opinion of the respondent's purported current criminal activities, which opinion was essentially unsupported by any non-subjective evidence and the absence of any prosecution therefor. Nevertheless, that portion of the detective's testimony concerning the existence of the Bruno crime family, the membership thereof, as well as the respondent's association, including criminal association, with members of the Bruno crime family was believable. This portion of the detective's testimony was based upon his personal experiences as a State Police officer,

information accumulated during the past 20 years by the State Police, information from other law enforcement agencies, including the State Commission of Investigation, Federal Bureau of Investigation, etc., information received from confidential informants, and the respondent's criminal record history. More specifically, the detective's opinion, although based upon subjective and essentially undisclosed information, was corroborated fully by objective documentary evidence. In addition, the opinion was not refuted by the respondent. In the final analysis, I am persuaded to accept this portion of the detective's testimony.

Although Mr. Kane asserted his Fifth Amendment right to silence in response to various questions posed by the deputy attorney general, which questions focused upon the respondent's purported association and criminal association with members of the Bruno crime family, I have chosen not to draw any inferences therefrom and have not relied to any degree upon the respondent's silence. Essentially, the testimony of the detective together with the documentary evidence was fully persuasive and there is no need to address respondent's silence.

After consideration of the entire record in this matter, I further **FIND** that:

1. A traditional organized crime group exists in the greater Philadelphia-Southern New Jersey area and is identified as the Bruno crime family.

2. Nicodemo Scarfo is the boss of the Bruno crime family.

3. Carmine "Chickie" Merlino is the underboss of the Bruno crime family.

4. Charles Warrington, Philip Leonetti, Lawrence Merlino, Nicholas Virgilio and Anthony DePasquale have been identified as members of the Bruno organized crime family.

5. The respondent associates with Anthony DePasquale, Lawrence Merlino, Philip Leonetti and Nicholas Virgilio.

6. The respondent is a criminal associate of the Bruno crime family and has a criminal association with Lawrence Merlino, Salvatore Merlino, Philip Leonetti and Nicholas Virgilio.

7. The detective's testimony with regard to the structure and membership of the Bruno crime family, the respondent's association with members of the Bruno crime family, and the respondent's criminal association with members of the Bruno crime family is believable and persuasive.

8. The detective's testimony with regard to the respondent's current criminal activities in conjunction with the Bruno crime family was not corroborated by any direct evidence and was not believable.

DISCUSSION OF LAW AND CONCLUSIONS

Section 72 of the Act mandates that the Commission provide by regulation for the institution of a list of persons who are to be excluded from any licensed casino establishment. This section also sets forth certain classifications of persons, based upon their criminal activities or unsavory public image, who should be considered for possible exclusion. The Commission promulgated a series of regulations which were designed to implement the statute. N.J.S.A. 19:48-1.1 et seq. In pertinent part, N.J.A.C. 19:48-1.3, criteria for exclusions, provides:

(a) The exclusion list may include any person:

1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

2. Who is an associate of a career or professional offender and whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

3. Who has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; and

4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to

> the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

When the Division proposes to have a person's name placed on the exclusion list it has the burden of establishing, by the preponderance of the credible evidence, the reasons for such placement. The Division alleged that the respondent's name should be included on the exclusion list, pursuant to N.J.A.C. 19:48-1.3(a)1, 2, 3 and 4.

A career or professional offender is defined in N.J.A.C. 19:48-1.1 as follows:

> Any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state.

Further, "occupational manner or context," as referred to at N.J.A.C. 19:48-1.1, means "the systematic planning, administration, management or execution of an activity for financial gain." Although the parties dispute what proofs are required to satisfy the regulations, it is abundantly evident that, regardless of whether there is a conviction for such misconduct, there must be sufficient credible evidence of the commission of more than one unlawful act which establishes that a person relies upon his misconduct as a means of self support.

The unrebutted and believable opinion testimony of Detective McLaughlin of the respondent's criminal association with organized crime, association with members of organized crime, together with the respondent's conviction for extortion and his subsequent incarceration by reason of his association with Nicodemo Scarfo was sufficient to establish that the respondent has been, at least as recently as 1982, involved as a career or professional offender with members of organized crime.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent is a career or professional offender, pursuant to N.J.A.C. 19:48-1.3(a)1.

The Division also alleged that Mr. Kane was an associate of Nicodemo Scarfo, Charles Warrington, Salvatore Merlino, Lawrence Merlino and Philip Leonetti, each of whom was alleged to be a career or professional offender.

Webster's New Collegiate Dictionary (7 ed. 1979) at 67 and in pertinent part, defines "associate" as "1. to join as a partner, friend, or companion; 2. . . . to keep company with attend." Clearly, the Division contended that the alleged associations were related to purported criminal misconduct. The Division's proofs with regard to the named individuals with whom the respondent purportedly associated consists of the respondent's criminal record history and the opinion testimony of Detective McLaughlin. This testimony was not rebutted. Further, the detective testified to having observed the respondent in the presence of these persons on various occasions. For the limited purpose of this hearing, it has been found that Messrs. Scarfo, Warrington, both Merlinos and Leonetti are career criminal offenders. In addition, the opinion of the detective with regard to the criminal association between the respondent and the named persons was believable and persuasive.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent is an associate of Messrs. Scarfo, Warrington, both Merlinos and Leonetti, pursuant to N.J.A.C. 19:48-1.3(a)2.

It was not disputed that Mr. Kane's conviction satisfies the requirements of N.J.A.C. 19:48-1.3(a)3.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent has been convicted of a criminal offense which is punishable by more than six months in prison.

The inimicality of the presence of a person in a licensed casino establishment is defined in N.J.A.C. 19:48-1.1 as:

> "Inimical to the interest of the State of New Jersey or of licensed gaming" means adverse to the public confidence and trust in the credibility integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act.

In In the Matter of the Hotel and Restaurant Employees and Bartender's International Union Local 54 (N.J. App. Div., July 11, 1985, A-993-82T5, A-317-84T5, A-525-85T5, A-880-84T5), the Appellate Division held that inimical means ". . . adverse to the policy of the Act and gaming operation," i.e., contrary to strict regulatory controls over all facets of casino activities (slip opinion at 17 and 18).

In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether a person's conduct is inimical to the policies of the Act. Although this opinion dealt with licensing criterion, it is properly applicable in exclusion list cases. The Commission states at 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate what participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

Legalized casino gaming in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to a most pervasive and stringent regulation. In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325, 328, app. dism., 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342

(App. Div. 1981), aff'd as modified, 90 N.J. 361, app. dism., 103 S. Ct. 562 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate at 381:

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations," N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)(7).

Further, it has been recognized that one of the primary goals of the Act was "to guard against any danger of infiltration by organized crime." In re Boardwalk Regency Casino License Application, 180 N.J. Super. at 340; Local 54, slip opinion at 18 and 19.

The Division's proofs established that the respondent is a known felon, an associate of members of organized crime and a criminal associate of organized crime. Accordingly, it is abundantly evident that the respondent is subject directly to influence in his daily activities by organized crime personna. Such an extensive relationship with organized crime, including the commission of criminal misconduct, establishes that the respondent's presence in a licensed casino establishment would reasonably have a negative effect upon the regulatory framework and the public's perception of licensed gaming, i.e., it would be contrary to the policies of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's presence in a licensed casino establishment would be inimical to the interests of the State and licensed gaming therein, pursuant to N.J.A.C. 19:48-1.3(a)4.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement to include the name of Saul Kane upon the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino hotel be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 26, 1985
DATE

Richard L. Volva Jr.
RICHARD L. VOLVA, JR., ALJ

Receipt Acknowledged:

July 31, 1985
DATE

Bernadette P. Fuoco
CASINO CONTROL COMMISSION

Mailed to Parties:

July 31, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

ml/E

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

P-1 New Jersey State Police - Operations Report, prepared by Detective Lyons, June 1, 1978

P-2 Resorts International Hotel, Inc. - General Incident Report, prepared by Security Officer Albert Herman, December 13, 1978

P-3 Resorts International Hotel, Inc. - Evictions Form, prepared by Guard Albert Herman, December 13, 1978

P-4 Atlantic City Police Department - Investigation Report, prepared by Detectives L. Rivera and H. Charles, September 22, 1981; Supplementary Investigation Report, prepared by Detective Donald Tomasello, September 22, 1981; Arrest Report, prepared by Detectives L. Rivera and H. Charles, September 22, 1981; letter to the Atlantic City Municipal Court from Joseph F. Fusco, Atlantic County Prosecutor, January 13, 1982; The State of New Jersey v. Saul Kane, Atlantic City Municipal Court, Docket Number C-8331, Complaint, September 22, 1981; The State of New Jersey v. Saul Kane, Atlantic City Municipal Court, Docket No. C-8330, Complaint, September 22, 1981 (6 pages)

P-6 United States of America v. Saul Kane et als., United States District Court for the District of New Jersey, Criminal Number 77-00334, Indictment, filed September 19, 1977; Judgment and Probation/Commitment Order, May 12, 1978 (5 pages)

P-7 United States of America v. Saul Kane, United States District Court for the District of New Jersey, Number 77-00334, Judgment, September 30, 1982; Presentment, September 11, 1982 (5 pages)

(B) EXHIBITS NOT ADMITTED INTO EVIDENCE

P-5 Id. Exhibit not offered

P-8 Id. Exhibit not offered

P-9 Id. New Jersey State Police - Investigation Report, prepared by Agent L. Paccione, July 10, 1984 (2 pages)

P-10 Id. Boardwalk Regency Corporation - Slot Progressive Jackpot Receipt, June 28, 1984

P-11 Id. Chart and Dossier (2 pages)

P-12 Id. Report entitled "Organized Crime in America," which emanated from hearings before the Committee on the Judiciary, United States Senate, 98th Congress, First Session on Organized Crime in America, January 27, February 16,

March 2 and 3, 1983, Serial Number J-98-2, Part 1, U.S. Government Printing Office, Washington, 1983, redacted portion

P-13 Id. Report entitled "Organized Crime in America," which emanated from hearings before the Committee on the Judiciary, United States Senate, 98th Congress, First Session on Organized Crime in America, January 27, February 16, March 2 and 3, 1983, Serial Number J-98-2, Part 1, U.S. Government Printing Office, Washington, 1983, entire volume (not offered)

WITNESS LIST

FOR THE PETITIONER:

Saul Kane
Michael McLaughlin
Ronald Walraven

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-16
OAL DOCKET NO. CCC 1319-85
REGISTRATION NO. 43813-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	: FINAL ORDER
MICHAEL PATRICK KELLY,	:
Respondent.	:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 18, 1985;

IT IS on this 5TH day of December 1985, ORDERED that the initial decision in this matter is modified as follows:

(1) The ALJ concluded that the respondent is disqualified from registration as a casino hotel employee due to his conviction on December 21, 1984, for conspiracy to distribute a controlled dangerous substance (CDS) and possession of CDS with intent to distribute both of which the ALJ found to be a statutory disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(3). The ALJ further found that the respondent was not rehabilitated pursuant to N.J.S.A. 5:12-90(h). While the Commission agrees

with the ALJ's conclusions that the respondent's conviction for possession with intent to distribute is a basis for disqualification pursuant to N.J.S.A. 5:12-86(c)(3), it cannot concur with the similar conclusion regarding the conspiracy conviction.

(2) While N.J.S.A. 5:12-86(c)(1) and (2) provide for disqualification of any person who has conspired to commit an offense enumerated in such subsections, there is no comparable provision under N.J.S.A. 5:12-86(c)(3). Thus, the conviction for conspiracy to distribute a controlled dangerous substance is not an automatic statutory disqualifier under N.J.S.A. 5:12-86(c)(3).

The proper analytical approach is to evaluate the conspiracy conviction to determine whether the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4). For the reasons enumerated by the ALJ in his negative finding on the issue of the respondent's rehabilitation pursuant to N.J.S.A. 5:12-90(h), the Commission hereby concludes that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) as well as -86(c)(3).

IT IS FURTHER ORDERED that the casino hotel employee registration of Michael Patrick Kelly is revoked based substantially upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Michael Patrick Kelly is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Michael Patrick Kelly, the Division of Gaming Enforcement, the Office of Administrative Law, and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1319-85
AGENCY DKT. NO. 85-16

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MICHAEL P. KELLY,
Respondent.

Norma Plenty, Law Assistant, appearing pursuant to R.1:21-3, for petitioner

Michael P. Kelly, respondent, pro se

Record Closed: June 25, 1985 Decided: August 9, 1985

BEFORE **JOSEPH F. FIDLER**, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on January 24, 1985, seeking judgment revoking the respondent's casino hotel employee registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based on the respondent's 1984 conviction upon a plea of guilty to one count of conspiracy to distribute a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1) and N.J.S.A. 2C:5-2, and one count of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1). The issue to be determined in this matter is as follows:

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Whether the respondent, notwithstanding his 1984 conviction upon a plea of guilty to one count of conspiracy to distribute a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1) and 2C:5-2, and one count of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), which are enumerated disqualifying offenses under sections 86c(1) and (3) of the Casino Control Act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the Act.

PROCEDURAL HISTORY

The complaint of the Division of Gaming Enforcement was filed with the Casino Control Commission on January 24, 1985. By letter dated February 5, 1985, the respondent requested a hearing. On March 8, 1985, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on April 24, 1985. The hearing was subsequently conducted on June 25, 1985.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 21-year-old resident of Tuckerton, New Jersey. He is the holder of Casino Hotel Employee Registration No. 43813-40, and he has been employed by licensed casino hotels in Atlantic City, New Jersey, on several occasions. From September 2, 1982 until March 15, 1983, the respondent was employed by the Golden Nugget Casino Hotel. The respondent quit this employment following numerous management changes during a relatively short period of time.

From April 1, 1983 until October 15, 1983, the respondent was employed by the Tropicana Casino Hotel. It was his testimony that his girlfriend also worked at the Tropicana at the same time. According to the respondent, the presence of his girlfriend created a difficult situation, so he quit his employment at the Tropicana. From August

1984 until February 1985, the respondent was employed as a bus boy at Harrah's Casino Hotel. He subsequently obtained his license to sell real estate in the State of New Jersey and he works as a real estate salesman approximately six hours per day. He has yet to earn a commission and he depends upon his parents, with whom he lives, for support.

The respondent testified candidly that he became involved in the use of marijuana approximately three years ago. About a year and a half ago, the respondent began selling marijuana to make money. According to the respondent he was able to purchase an automobile with the proceeds he derived from selling marijuana.

It was the testimony of the respondent that the people who were his source for marijuana pressured him mentally into becoming more and more involved in the sale of marijuana. After selling the controlled dangerous substance for six or seven months, the respondent saw no way out of his situation other than to be arrested. On May 14, 1984, the respondent was arrested while attempting to sell 25 pounds of marijuana to an undercover investigator from the Ocean County Prosecutor's Office for a price of $30,000 (Exhibit P-1). In addition to being charged with conspiracy to distribute a controlled dangerous substance, the respondent was also charged with possession of a concealed dangerous weapon because he had a hand gun on his person at the time of his arrest (Exhibit P-1).

As a result of the respondent's arrest, sufficient probable cause was shown for the issuance of a warrant to search the respondent's residence in Margate City, New Jersey (Exhibit P-6). The execution of the search warrant resulted in additional charges against the respondent of possession of over 25 grams of marijuana and possession with intent to distribute (Exhibit P-5), contrary to N.J.S.A. 24:21-20a(4) and N.J.S.A. 24:21-19a(1). Two indictments were entered against the respondent. On June 7, 1984, the respondent was indicted by the Atlantic County Grand Jury on one count of possession of a controlled dangerous substance and one count of possession of a controlled dangerous substance with intent to distribute (Exhibit P-3). On June 27, the respondent was indicted by the Ocean County Grand Jury on one count of conspiracy to distribute a controlled dangerous substance, one count of possession of a controlled dangerous substance with intent to distribute, and one count of possession of a hand gun without a permit (Exhibit P-2).

The respondent testified credibly that he stopped his use of marijuana at the time of his arrest. He cooperated with the police and provided information which assisted them with their investigation. On October 22, 1984, the respondent entered a plea of guilty to count one of the Ocean County Indictment, which charged him with conspiracy to distribute a controlled dangerous substance, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 24:21-19a(1), and to count two of the Atlantic County Indictment, which charged him with possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). As a result of his plea of guilty, the respondent was sentenced on December 21, 1984, to concurrent indeterminate terms at the Yardville Youth Reception and Correction Center, which sentence was suspended. The respondent was also placed on probation for a period of two years with the condition that he serve six months in the Ocean County Jail on a work release program. A $25 penalty on each count was ordered and counts two and three of the Ocean County Indictment and count one of the Atlantic County Indictment were dismissed (Exhibit P-4). In his statement of reasons for the sentence imposed, Superior Court Judge Mark Addison stated:

> Under the circumstances revealed in the pre-sentence report, it would appear that the Atlantic County Indictment and the Ocean County Indictment reflect a continuation of the same crime although committed in two counties within a 48-hour period of time. The amount of marijuana involved is considerable and a custodial sentence is indicated.

It was the testimony of the respondent that he was on a work release program for 60 days of the six-month Ocean County Jail sentence. During the day, he worked as a bus boy at Harrah's Casino Hotel and he returned to the jail at night. He continues to serve his two-year period of probation and he has satisfied all conditions of the probation as of this time (Exhibit R-1). According to the respondent's probation officer, Herschel Pumphrey, it is likely that the respondent will be eligible for an early termination of probation, due to good conduct, after serving two-thirds of the two-year probationary period (Exhibit R-1).

Letters of reference from the respondent's supervisors at Harrah's Marina Hotel Casino were admitted into evidence as Exhibits R-2 through R-5. These letters attest to the respondent's conscientious job performance, his excellent attitude and engaging personality, and his sincere desire to overcome a past mistake with a second chance in life. The respondent noted in his testimony that he was not working at a licensed casino at the time of his arrest. He has moved his residence and he no longer has

any involvement with illegal drugs or the people who use and sell them. According to a letter from Kathleen D'Ippolito, a teacher of geography and history who has known the respondent for several years, the respondent has exhibited self-discipline and strength of character. In her opinion, the respondent has always been able to convert problems into learning experiences (Exhibit R-6).

All of the preceeding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to Section 1d(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to Sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant who has been convicted of an offense specifically identified in the Casino Control Act as a disqualifying offense. It is undisputed that the respondent was convicted in October 1984 upon his plea of guilty to the offenses of conspiracy to distribute a controlled dangerous substance, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 24:21-19a(1) and possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). These offenses are specifically identified disqualifyers from licensure, pursuant to Sections 86c(1) and (3) of the Casino Control Act. Therefore, I **CONCLUDE** that the respondent's conviction of conspiracy to distribute a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute permit the revocation, suspension or limitation of his registration, pursuant to Sections 86c, 91b and 129 of the Casino Control Act.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to Section 86c, the appropriate sanction is revocation of the credential, in the absence of a demonstration of rehabilitation, pursuant to Section 91d of the Act, or waiver, pursuant to Section 91e of

the Act. See, State v. Wynette Harris, Docket No. 81-19, Commission Decision 1983. Pursuant to Section 91d of the Act, the respondent's casino hotel employee registration shall not be revoked on the basis of his conviction of an offense enumerated in the Act as disqualification criteria, provided that he has affirmatively demonstrated his rehabilitation, by clear and convincing evidence, with due consideration given to the rehabilitation factors set forth in that section. The respondent was 20 years old at the time of his drug arrest in May 1984. A little over one year has passed since that time, and he has served the period of incarceration and work release which was imposed upon him at his sentencing on December 21, 1984. He remains on probation and he is currently complying with the conditions of probation, including reporting to his probation officer once a month.

There is no evidence to establish that the respondent has any record of arrests and convictions other than for the offenses which are the subject of this proceeding. However, he acknowledged that he was involved with the sale of illegal drugs for nearly half a year prior to his May 1984 arrest. The substantial amount of marijuana which the respondent attempted to sell to an undercover investigator was a significant factor in the decision of the sentencing judge to impose a period of incarceration. By his own admission, the respondent had become deeply involved in the sale of illegal drugs and had seen no way out of his situation other than to be arrested. In addition to the 25 pounds of marijuana which he had attempted to sell to the undercover investigator, large amounts of marijuana were seized at the respondent's residence.

It is the contention of the respondent that he is rehabilitated and that he deserves a second chance. The respondent is a sincere young man who appears to have learned a great deal from his involvement with illegal drugs and the consequences of such involvement. His efforts toward rehabilitation deserve recognition and encouragement. However, the respondent remains on probation. Sufficient time has not yet passed since the respondent's criminal conduct, conviction and sentencing to permit him to establish his rehabilitation by clear and convincing evidence. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has been convicted of disqualifying offenses under Section 86c(1) and (3) of the Act, has failed to demonstrate his rehabilitation, within the meaning of Section 91d, so as to avoid revocation of registration, pursuant to Sections 91b and 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Michael P. Kelly be and is hereby **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 9, 1985
DATE

JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12 AUG 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

August 14, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Petitioner:

P-1 New Jersey State Police Arrest and Investigation Reports
P-2 Indictment, dated June 27, 1984
P-3 Indictment, dated June 7, 1984
P-4 Judgment of Conviction, dated December 21, 1984
P-5 Criminal Complaint
P-6 Investigation Report

For the Respondent:

R-1 Letter, dated April 8, 1985
R-2 Letter, dated February 21, 1985
R-3 Letter, dated February 27, 1985
R-4 Undated letter
R-5 Undated letter
R-6 Letter, dated March 1, 1985

WITNESSES

For the Petitioner:

None

For the Respondent:

Michael P. Kelly

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-167
OAL DOCKET NO. CCC 8915-84
APPLICATION NO. 43947-21

APPLICATION OF

MADELINE N. KRINSKY

FOR A CASINO EMPLOYEE LICENSE

(JUNKET REPRESENTATIVE)

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions to the initial decision having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 5, 1985,

IT IS on this 9th day of July 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Madeline N. Krinsky is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Madeline N. Krinsky is prohibited from applying for any license, qualification or

approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Madeline N. Krinsky from obtaining a casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Madeline N. Krinsky, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8915-84

AGENCY DKT. NO. 84-EA-167

MADELINE N. KRINSKY,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

John L. Grossman, Esq., for petitioner (Perskie & Nehmad, attorneys)

Anthony D'Elia, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 1, 1985 Decided: April 24, 1985

BEFORE **JEFF S. MASIN,** ALJ:

Madeline N. Krinsky applied to the Casino Control Commission for a casino employee license with a designation as a junket representative. The Division of Gaming Enforcement opposed licensure and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 14, 1985, and a prehearing order was issued on January 16, 1985. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin on March 18, 1985, at the Brigantine Municipal Court. A stipulation of facts was submitted to the judge after the hearing and was received on April 1, 1985, at which time the record closed.

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THE ISSUE

The Division opposes Mrs. Krinsky's licensure as a casino employee because it believes that she cannot establish the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)(2), as incorporated by reference in sections 90(b) and 102 (b). Under the Casino Control Act, an applicant for licensure as a casino employee must demonstrate this requirement by clear and convincing evidence.

THE EVIDENCE

As previously noted, the parties have entered into a written stipulation of certain facts, which are set forth in full herein and which I incorporate herein as **FINDINGS.**

1. Madeline Krinsky failed to report her total income derived from her employment with Casino Adventures Limited in her 1981 and 1982 Federal and New York State income tax returns.

2. On or about August 22, 1984, Mrs. Krinsky executed amended Federal and New York State tax returns, which reflected net changes in total income of $2,600 for the year 1981 and $5,500 for the 1982.

3. On or about August 22, 1984, Mrs. Krinsky paid her delinquent taxes plus interest and penalties for the years 1981 and 1982.

In addition to the above evidence, Madeline Krinsky testified that she is a resident of Merrick, Long Island, New York and is married to Neil Krinsky. She is the mother of two high school age girls. Her husband is presently employed as a salesman in the replacement window business. Prior to 1980, he was a commodities broker, dealing in gold and silver contracts. Mrs. Krinsky testified that in 1980 the company which Mr. Krinsky dealt with for his contracts "went down the drain" and as a result Mr. Krinsky lost his business. Thereafter, he worked for approximately six to seven months for Vertronics Corporation as an alarm salesman.

Mrs. Krinsky testified that as a result of the failure of Mr. Krinsky's business the couple's small savings account was wiped out, as well as their personal investment in

the company. When Mr. Krinsky went to work for Vertronics he was a commission salesman receiving no salary. He is also a commission salesman at his present employment with Thermosash. Mr. Krinsky had been the primary support of the family prior to the loss of his business.

The witness testified that she and her husband filed joint income tax returns and her husband has been responsible for providing the information to their accountant. The accountant prepared the 1981 returns which Mrs. Krinsky signed, but in accordance with her general practice over the years she would sign the returns without reviewing them, only asking the accountant if the Krinskys were going to get a refund.

Mrs. Krinsky had been employed by Casino Adventures beginning in 1981. She told the operator of that business, Sy Zemsky, that she wanted to be paid off the books. The reason for this was that the Krinskys needed the money due to their tight financial situation following Mr. Krinsky's loss of his business. Mrs. Krinsky candidly admitted that she received money from Casino Adventures in 1981 and 1982 under the table because she needed the money and that she was attempting to prevent the couple's taxable income from being in a higher tax bracket because of the money that she was receiving in her employment. In other words, she was attempting to evade taxes.

During the period of the Krinsky's financial bind caused by the failure of Mr. Krinsky's business, the Krinskys managed on the money brought in by Mr. Krinsky and Mrs. Krinsky's unreported income, as well as money received from family members. Eventually the Krinskys obtained a second mortgage.

Mrs. Krinsky admitted that during a telephone conversation with Investigator DeMarzo of the Division of Gaming Enforcement she had advised DeMarzo that she had not been paid for her work at Casino Adventures. She said that she did this because she was afraid. She subsequently admitted that she had been paid in the course of a personal interview with the Division.

At the time of the hearing, Mrs. Krinsky was employed by Steve Harris, Inc. in the junket business and is paid "on the books." She filed amended tax returns in August of 1984 for the 1981 and 1982 taxes and explained that the reason for filing at that time was because that was the point at which the Krinskys had been able to put together the

money needed to pay the back taxes. Prior to that time they were paying other debts, such as back mortgage payments and credit card bills.

Mrs. Krinsky testified that she had not known Mr. Zemsky prior to becoming employed with him and she had gone to Casino Adventures because of a recommendation from a friend.

In addition to her own testimony, Mrs. Krinsky presented a number of character references from friends and relatives, as well as former business associates. These letters generally speak highly of Mrs. Krinsky's character and also reflect knowledge on the part of relatives and friends of her financial crisis and the financial aide given by relatives to the Krinskys during their financial difficulties.

DISCUSSION

The evidence presented clearly establishes that Madeline Krinsky, in an attempt to avoid the payment of income taxes due on monies earned by her in the course of employment, failed to reveal to the federal and state authorities that she had worked for Casino Adventures and made $2,600 in 1981 and $5,500 in 1982. The petitioner's candid testimony at this hearing reveals without question that her action in failing to reveal these earnings was completely intentional and for the direct purpose of avoiding the payment of taxes both with respect to the individual earnings of Mrs. Krinsky from Casino Adventures and the additional taxes that would have been due on other monies earned, presumably by Mr. Krinsky, had the tax bracket been higher.

The witnesses' testimony fully demonstrates that her actions were knowledgeably illegal. Despite the fact that the Krinsky's were suffering a financial difficulty in 1981 and 1982, there was no legitimate excuse for Mrs. Krinsky's actions. While the financial problems may evoke some sympathy, the solution undertaken to provide some further funds for the household was completely unacceptable. The fact that the taxes which would have been due had the earnings been properly reported have now been paid does not negate the seriousness of Mrs. Krinsky's actions.

Although the evidence presented includes character references speaking highly of Mrs. Krinsky, it is not entirely clear whether some of the character references were aware of Mrs. Krinsky's actions with respect to her taxes. Regardless of whether the

persons supporting Mrs. Krinsky's character would hold the same opinion despite knowledge of the tax problem or not, I **FIND** that Mrs. Krinsky's actions with respect to her 1981 and 1982 taxes raise serious questions about her good character, honesty and integrity which cannot be ignored in determining whether she qualifies for this license. The income tax laws presuppose that citizens of this country will honestly and completely report their earnings and income and pay the proper taxes so that the government may function in a proper fashion. Given the fiscal crisis which faces both federal and state governments, the withholding of taxes and the purposeful attempt to evade taxes is a serious offense. Where one seeks to obtain a license for permission to be employed in a highly sensitive and highly regulated industry such as the casino industry, one must, in the view of the Legislature, meet a high test with respect to one's good character, honesty and integrity. The burden placed on an applicant for license is not to prove their good character, honesty and integrity by a mere preponderance of the evidence, but by the higher standard of clear and convincing. Regardless of whether Mrs. Krinsky's good character, honesty and integrity might be considered proven by a preponderance standard (which I do not determine here), I am compelled to find that her recent dealings with the IRS demonstrate a sufficient lack of good character, honesty and integrity that she cannot be found to meet the heavy burden of proving those attributes by clear and convincing evidence. For this reason, I **CONCLUDE** that her license application must be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 24, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

April 25, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 29 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

EXHIBIT LIST

Joint Exhibits:

J-1 Letter from Murray Brown

J-2 Letter of February 20, 1985, from Sandra and Michael Katz

J-3 Letter of February 27, 1985, from Milton Meltzer

J-4 Amended U.S. Individual Income Tax Return, Form 1040X, 1981, three pages

J-5 Amended New York State Resident Income Tax Return, Form IT-201-X, for 1981

J-6 New York State Amended Resident Income Tax Return, Form IT-201-X, for 1982, two pages

J-6 Amended U.S. Individual Income Tax Return, Form 1040X, for 1982, three pages

J-7 Photocopies of checks to the Internal Revenue Service for $1,299 and $871 and to New York State Income Tax for $178 and $939

J-8 Photocopy of check for $369 to Internal Revenue Service with attached IRS notice of December 31, 1984

J-9 Photocopy of check in the amount of $233.41 to the Internal Revenue Service with attached IRS form of December 31, 1984

J-10 Letter of January 8, 1985, from Mrs. Sharon Goldstein Stefke

J-11 Letter of June 2, 1984, from Ruth & Bernard Goldstein

J-12 Letter of November 14, 1984, from Anne Steele

J-13 Letter of November 26, 1984, from Terry Friedman

J-14 Letter of December 17, 1984, from Milt Hayden

J-15 Letter of January 17, 1985, from Esther Zetlin

J-16 Letter of January 16, 1985, from Ann Ginsberg

J-17 Personal History Disclosure Form - 2A, received by Casino Control Commission December 28, 1982

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-448
OAL DOCKET NO. CCC 2902-84
LICENSE NO. 46099-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
OSCAR LLANOS,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and no exceptions or objections having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 28, 1984,

IT IS on this 19th day of July 1985, ORDERED that the initial decision is modified as follows:

> In view of the ALJ's finding with which the Commission concurs that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) and (g) by reason of his commission in December 1983 of theft by unlawful taking contrary to N.J.S.A. 2C:20-3 while in the course of his employment as a slot change attendant at Tropicana Hotel and Casino, it is unnecessary to reach any issue concerning the respondent's arrest in March 1984 on charges of aggravated assault and resisting arrest or his continuing qualification under N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license held by Oscar Llanos be revoked based upon the reasons set forth in the initial decision, as modified above, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Oscar Llanos is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this final order be served upon Oscar Llanos, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2902-84

AGENCY DKT. NO. 83-448

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

OSCAR LLANOS,

Respondent.

Paul Vagianos, Deputy Attorney General, for the Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Oscar Llanos, pro se

Record Closed: September 10, 1984 Decided: October 24, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On December 28, 1983, the Division of Gaming Enforcement (Division) filed a complaint seeking to revoke respondent's casino employee license. The complaint alleged that respondent was arrested and charged with theft in violation of N.J.S.A. 2C:20-3 as a result of an incident on December 14, 1983, wherein he was accused of removing four silver dollars from four rolls of coins while working as a slot change attendant at the Tropicana Casino/Hotel.

Respondent's license was suspended by order of the Casino Control Commission on January 12, 1984. The suspension order was vacated on April 19, 1984.

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Respondent's motion to dismiss the Division's complaint was denied. The matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on August 6, 1984 at which time the Division amended its complaint to include as additional grounds for revocation, an incident allegedly occurring on March 6, 1984, wherein respondent was arrested in Egg Harbor City, New Jersey, and charged with aggravated assault in violation of N.J.S.A. 2C:12-1(b)(5)(a) and resisting arrest in violation of N.J.S.A. 2C:29-2. The prehearing order entered on August 15, 1984 defined the following issues to be resolved at the hearing:

1. Whether the alleged violations of N.J.S.A. 2C:20-3, 2C:12-1(b)(5)(a) and 2C:29-2 are inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4).

2. Whether respondent's casino employee license shall be revoked pursuant to N.J.S.A. 5:12-86g, notwithstanding that the charge of a violation of N.J.S.A. 2C:20-3 was dismissed for lack of prosecution.

3. If the Division meets its burden of proof by the preponderance of the evidence as to issues 1 and 2, respondent must demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) as incorporated in section 5:12-90b of the Casino Control Act.

A hearing was held at the Hamilton Township Muncipal Utilities Authority, Mays Landing, New Jersey, on September 10, 1984.

FINDINGS OF FACT

Oscar Llanos is a 23-year-old casino employee licensee with the following employment and educational backkground:

1. Upon the initial opening of Bally's Park Place Hotel/Casino he worked as a bar porter.

2. He then attended Atlantic Community College for a brief period of time, ultimately dropping out to resume employment.

3. He worked at the Harrah's Hotel/Casino kitchen for approximately two months.

4. He then worked for Lenox China.

5. After attending the Casino Career Institute through the CETA program, (where he studied security) he obtained his casino employee license.

6. He then went to work in security at the Tropicana Hotel/Casino. When he was laid off from that job, he assumed another position as a slot change attendant. He worked in that position until he was terminated on December 14, 1983.

7. He has been employed by Harrah's Hotel/Casino for approximately the past five months as a slot booth cashier selling change to the customers. After three weeks on the job he was asked to do "impressments" which requires him to bring substantial sums of money from the coin bank to the slot booth.

On December 14, 1983, respondent was working at the Tropicana Hotel/Casino as a slot change attendant, a position which required him to sell rolls of coins to slot machine players on the casino floor. A slot change attendant is assigned a designated area on the casino floor where he sells the coins from a "bank" of $300 (in rolled nickels, quarters or silver dollars) which he is given at the commencement of his shift. When a slot change attendant runs out of rolled coins, he reports to the slot booth cashier to purchase more rolled coins. The slot booth cashier receives the rolled coins each morning from a hard count attendant who fills the slot booth with unsealed cans containing the various denominations of rolled coins. Each morning the hard count attendants remove the loose coins from the slot machines, place them in buckets, take the coins to a locked room and dump the coins into counting machines which wrap the coins into rolls. When the coins emerge from the wrapping machines, they are stacked on a cart and placed in a vault until they are delivered to the slot booth cashier by the hard count attendant. The

rolled coins are manually handled by the hard count attendant, the slot booth cashier, and slot change attendant.

On December 14, 1983, approximately 20 slot change attendants were working the casino floor. Two slot booth cashiers were on duty in respondent's designated area and three or four hard count attendants dealt directly with the two slot booth cashiers. Additionally, there was one supervisor on duty for the 20 slot change attendants. The supervisor was charged with the responsibility of ensuring that the slot change attendants were selling coins only in their designated areas, seeing that they come back from their breaks on time, and in general overseeing the attendants to be certain that they are doing their job.

If a slot booth cashier takes a break, the slot booth is locked up. If a slot change attendant takes a break (or has to leave the casino floor for any reason), he is obligated to lock his coins in a locker located on the casino floor and take the locker key with him.

Kevin Flanagan has been employed as a slot change manager at the Tropicana Hotel/Casino for the past three years and was on duty on December 14, 1983. On that date, Mr. Robert Hong, a casino customer, complained to Mr. Flanagan that he had purchased a roll of twenty silver dollars but the roll only contained nineteen dollars. Mr. Hong had purchased a second roll of twenty silver dollars that was unopened when he complained to Mr. Flanagan. Mr. Flanagan opened the second roll in front of Mr. Hong, counted the silver dollars and found nineteen dollars in the roll. Mr. Flanagan reimbursed Mr. Hong $22, and asked him to purchase another roll of coins from the slot change attendant who had sold him the two rolls which had been shortchanged. Mr. Hong, accompanied by a supervisor, purchased another roll of twenty silver dollars, which he gave to Mr. Flanagan. Mr. Flanagan opened that roll of coins and found it one dollar short. Mr. Hong purchased all three rolls from the same slot change attendant, whom the supervisor identified as the respondent, Oscar Llanos.

Mr. Flanagan then proceeded to have Mr. Llanos "counted down", i.e., two other rolls of silver dollars in respondent's apron were collected and opened. Each of those rolls were also short one dollar. Respondent was then taken downstairs to the Investigations Office, where he was questioned. The Division of Gaming Enforcement was also called in and approximately one hour later, the Division brought Mr. Flanagan a bag

containing nine silver dollars and several quarters which had been found in respondent's shoe. Mr. Flanagan then proceeded to fire respondent.

Mr. Flanagan stated that rolls of silver dollars can be unrolled, coins removed, and then resealed. The resealing may or may not be visibly apparent, depending on the ability of the person resealing the rolls. While it is not unheard of for the coin machine to shortchange a roll of coins, in Mr. Flanagan's experience, there have never been three rolls shortchanged from one attendant in one evening.

Respondent claims that the money found in his shoe consisted of approximately $10.50 in silver dollars, quarters and nickels, half of which he claims he found on the casino floor, and the other half he claims was his own money. Respondent also attempted to imply during his cross-examination of Mr. Flanagan that he may have been wrongfully singled out as being the slot change attendant who shortchanged Mr. Hong. Respondent stated he had heard from another slot change attendant that Mr. Hong said that the attendant who shortchanged his rolls was black (respondent is not black). The New Jersey State Police Casino Investigation Bureau Report (P-1) states that after respondent was warned of his rights regarding the alleged theft, he admitted that he had taken coins from the rolls and rewrapped the rolls. The report states that respondent told the investigator that he had removed coins on several prior occasions, commencing approximately three weeks before the December 14, 1983 incident, in order to obtain extra money for the Christmas season. At the hearing, respondent admitted that he had removed two dollars from one roll of wrapped coins. Respondent said he made this admission to the investigator, because the investigator told him that if he was truthful, perhaps nothing detrimental would happen to him. Based upon respondent's admission at the hearing to taking two dollars from the rolled coins, his admission set forth in the investigation report (P-1) and in considering Mr. Flanagan's testimony that he personally opened four rolls of coins which had come from respondent's apron, each of which was shortchanged one dollar, I **FIND** that respondent did remove four silver dollars from rolls of wrapped coins during his course of employment on December 14, 1983. While the investigation report (P-1) states that respondent admitted to removing coins from wrapped rolls, the report is unclear as to whether that admission also applies to the coins found in respondent's shoe. Absent additional proofs as to the source of the coins in respondent's shoe, when weighed against respondent's denial of the theft of those coins, I make no finding that respondent removed those coins from wrapped rolls.

Mr. Flanagan filed a criminal complaint against respondent for violating N.J.S.A. 2C:20-3, alleging that respondent had removed ". . . one Susan B. Anthony, each from four (4) rolls for a total $4.00, while working as a slot attendant inside the Tropicana Hotel/Casino . . . (P-1). Mr. Flanagan was present the first time the matter was listed for hearing in Atlantic City Municipal Court. Respondent requested legal representation, and the matter was adjourned until the following week. Mr. Flanagan again appeared in court, and the matter was rescheduled because respondent's lawyer was not present. The matter was relisted for a hearing, but for some reason Mr. Flanagan was unaware of the court date, and the matter was dismissed by the Atlantic City Municipal Court.

On March 6, 1984, respondent was arrested and charged with aggravated assault on a police officer in violation of N.J.S.A. 2C:12-1(b)(5)(a) and resisting arrest in violation of N.J.S.A. 2C:29-2. Sergeant Steven Hadley, a member of the Egg Harbor City Police Department for six years, was dispatched on that date to deal with a reportedly violent domestic dispute in Egg Harbor City. He testified to the following: Upon his arrival at the scene of the dispute, Sergeant Hadley was advised by his dispatcher that someone involved in the incident had been bitten (by a person) and might require medical attention. When Sergeant Hadley entered the building where the dispute was occuring, he started up the stairs, and heard a large crash. When he got to the top of the stairs, he was met by respondent's sister who stated that respondent was drunk and had started trouble. Respondent's sister who was four months pregnant stated that respondent had punched her and she was experiencing some pains. Sergeant Hadley asked her if she wanted respondent removed from the apartment, and she stated yes. When Hadley walked toward respondent, respondent swung his arm in an aggressive manner, whereupon Hadley threw him on the bed and respondent then kicked him in the chest. Hadley ultimately handcuffed respondent, and in attempting to remove him from the apartment, respondent struggled to get away. While driving respondent to the police station he kicked Hadley in the head. Respondent kept stating that Hadley had no reason to detain him. Hadley uncuffed respondent at the police station and attempted to put him into a cell, whereupon respondent hit him in the face and also attempted to punch him. Respondent was restrained and locked in a holding cell. While Hadley proceeded to do his paperwork, respondent kept making derogatory remarks, utilizing obscene language and obscene gestures. When respondent was fingerprinted and photographed he became aggressive and smeared fingerprint ink all over the police station. After all of the paperwork was complete and photographs taken, Hadley prepared to take respondent to the hospital for treatment for his neck and because he was intoxicated. At that time, respondent accused

Hadley of biting him in the neck during the wrestling match in his sister's apartment. (When Hadley entered respondent's sister's apartment, he noticed that respondent had bite marks on his neck and that his neck was bleeding. Respondent's sister told Hadley that she had bitten him while they were fighting.)

Respondent admitted that on the evening of March 6, 1984, he had been ". . . drinking a lot and I got into a fight with my sister. . . ." He also stated "I don't know if you have been drunk before, but you do crazy things and I did." Respondent denies that he physically assaulted any police officers during that evening. He claims that while he was handcuffed, he was assaulted by a police officer, and suffered substantial injuries. Respondent's own testimony as to how and by whom he was bitten in the neck contradicted itself. Specifically, respondent at one point in his testimony stated that he was bitten in the neck by a police officer. At another point during the hearing, he stated that his sister bit him. Respondent claims that his sister simply wanted him taken to the police station to "cool off a little bit." He admits that he wanted to go home while he was detained at the police station, that he was screaming and yelling and that he did not want to be fingerprinted. Respondent claims that his attorney for the aggravated assault and resisting arrest charges has hospital reports and pictures of the injuries he received during the alleged assault upon him by the police officer, however, they were not produced at this hearing. In evaluating respondent's own testimony that he had been "drinking a lot" on the evening of March 6, 1984, that he resisted (at least to some extent) his arrest and processing at the police station, and considering the contradictions in testimony as to who bit him on the neck, I hereby **FIND** the testimony of Sergeant Hadley to be credible, and I **FIND** that his accounting of the incident of March 6, 1984, which is supported by the investigation report (P-3), is the accurate rendition of the events of that evening.

At the time of this hearing, the March 6, 1984 incident had not yet been disposed of in municipal court.

Respondent does not want to lose his license because he would like to go to blackjack school and improve himself. He wants to keep working and learn from his mistakes.

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-86g provides that licensure may be denied to a person who has engaged in any act which would constitute an offense under section 5:12-86c of the Casino Control Act, even if such conduct has not or may not be prosecuted under the criminal laws of the state of New Jersey. Based upon the factual findings contained in this decision, I **CONCLUDE** that respondent violated N.J.S.A. 2C:20-3, in that he removed four silver dollars from wrapped rolls of coins during the course of his employment as a slot change attendant at the Tropicana Hotel/Casino on December 14, 1983.

The next issue to be addressed is whether respondent's violation of N.J.S.A. 2C:20-3 is inimical to the policy of the Casino Control Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4). The Casino Control Commission has interpreted inimicality as follows:

> Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicated that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, (February 1979).

While it is indisputable that the amount of money taken by respondent from the rolls of coins was minimal, the amount of money taken is not the critical issue, rather, the nature of the offense is what is significant in determining whether respondent is fit for licensure. The offense was of a continuing nature, i.e., respondent admitted to the investigator that it had been occurring for several weeks. Based upon respondent's own admission, the offense would have continued until at least Christmas 1983 (P-1). Further, the fact that the offense occurred during the course of respondent's employment and was an offense perpetrated directly against his employer and a casino patron, is of

monumental consequence in this case. To permit a licensee to continue employment despite an admission that he wrongfully removed money from rolls of wrapped coins during the course of his employment is patently inimical to the policy of the Casino Control Act and to casino operations. I **FIND** absolutely no mitigating circumstances to offset the serious nature of the offense involved. Further, the offense occurred less than one year ago and while respondent's desire to continue to work and to learn from his mistakes is commendable, that attitude is not sufficient at this juncture to alleviate the gravity of the offense involved. I further **CONCLUDE** that the incident of December 14, 1983, is sufficient in and of itself (even without the incident of March 6, 1983) to warrant revocation of respondent's license.

However, having adopted the testimony of Sergeant Hadley as being an accurate representation of the events of March 6, 1984, I **CONCLUDE** that respondent's conduct on that date is also inimical to the Casino Control Act and to casino operations. This conclusion is based upon the acceptance of Sergeant Hadley's testimony as well as taking into account respondent's own admissions that he was extremely intoxicated, and that he engaged in aggressive behavior to the extent that he was totally uncooperative with a police officer. N.J.S.A. 5:12-1 clearly establishes that the casino gaming industry is one which is highly regulated and one in which law enforcement is of the utmost importance. A licensee's recent aggressive defiance of a law enforcement officer, albeit, that the behavior did not occur within a casino facility, is unacceptable, offensive and clearly inimical in an industry which requires respect for law enforcement officials. Respondent's drunkenness does not in any way mitigate his behavior on the evening of March 6, 1984.

N.J.S.A. 5:12-89b(2) as incorporated in section 5:12-90b requires a licensee to demonstrate by clear and convincing evidence his reputation for good character, honesty and integrity. Furthermore, N.J.S.A. 5:12-1(b)(8) provides that licensure is a revocable privilege which is ". . . conditioned upon the proper and continued qualification of the individual license . . ." (emphasis added). Respondent's testimony that he desires to keep working and learn from his mistakes and his aspiration to attend blackjack school, does not in any way affirmatively demonstrate that he has good character, honesty and integrity. The conclusions that respondent engaged in behavior on December 14, 1983 and March 6, 1984, which is inimical to the Casino Control Act and to casino operations, required respondent to present clear and convincing evidence of his good character, honesty and integrity. He failed to produce any such evidence. I, therefore, **CONCLUDE**

that respondent has failed to meet his affirmative burden by clear and convincing evidence of his reputation for good character, honesty and integrity.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that respondent's casino employee license shall be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 24, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 29 1984
DATE

Ronald L. Parker/phb
OFFICE OF ADMINISTRATIVE LAW

bc

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 New Jersey State Police Investigation Report, dated December 15, 1983; New Jersey State Police Property Report, dated February 15, 1983; New Jersey State Police Arrest Report, dated December 15, 1983, and Complaint filed in State of New Jersey v. Oscar Llanos (5 pages)

P-2 Division of Gaming Enforcement Supplementary Summary Report, dated April 19, 1984, with attachments (3 pages)

P-3 Egg Harbor City Police Department Investigation Report, dated March 6, 1984 (2 pages)

LIST OF WITNESSES

FOR PETITIONER:

Kevin Flanagan
Sergeant Steven Hadley

FOR RESPONDENT:

Oscar Llanos

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 84-281 & 84-EA-109
OAL DOCKET NOS. CCC 2544-85 &
CCC 7952-84 ON REMAND
APPLICATION NO. 44965-22
REGISTRATION NO. 32784-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

JUAN MALDONADO,

Respondent.

AND

APPLICATION OF JUAN MALDONADO

FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

A hearing in this consolidated matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 4, 1985,

IT IS on this 26th day of DECEMBER 1985, ORDERED that the initial decision in this matter is affirmed; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the letter-report of the Division of Gaming Enforcement, which is incorporated

herein by reference and made a part hereof, and for the applicant's failure to establish by clear and convincing evidence his qualifications for licensure pursuant to N.J.S.A. 5:12-80(a), 89(b)(2) and 90(b); and

IT IS FURTHER ORDERED that his casino hotel employee registration is revoked based upon the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Juan Maldonado is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Juan Maldonado, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2544-85
(ON REMAND CCC 7952-84)
AGENCY DKT. NOS. 84-281,
84-EA-109

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
JUAN MALDONADO,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Juan Maldonado, respondent, pro se

Record Closed: July 16, 1985 Decided: July 23, 1985

BEFORE **STEPHEN W. THOMPSON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Division of Gaming Enforcement (Division), Department of Law and Public Safety, seeks revocation of the respondent's casino hotel employee registration number 32784-40 and opposes respondent's application for casino licensure based upon allegations that respondent failed to reveal facts material to qualification or has supplied information which is untrue or misleading within the meaning of sections 86b, 90e and 91d of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission on September 4, 1984. By letter dated October 17, 1984, the respondent requested a hearing. On October 23, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 13, 1984, and the matter was scheduled for hearing on February 14, 1985. On February 14, 1985, respondent failed to appear at the hearing. On March 14, 1985, Administrative Law Judge Joseph F. Fidler issued an initial decision dismissing the matter and returning the matter to the Casino Control Commission. On May 2, 1985, the Casino Control Commission ordered the matter returned to the Office of Administrative Law for a hearing on all issues. On July 16, 1985, a hearing was conducted at the Brigantine Municipal Building, Brigantine, New Jersey.

FINDINGS OF FACT

Mr. Maldonado is 41 years of age and has lived in the Atlantic County area for at least 18 years.

On October 29, 1967, the respondent was arrested and charged with larceny of an automobile and possession of stolen property. On February 27, 1968, respondent was acquitted of the charges.

On November 21, 1968, the respondent was arrested and charged in Atlantic City, New Jersey, with breaking and entering and larceny. On January 7, 1969, the charges were dismissed.

On June 7, 1969, the respondent was arrested and charged with breaking and entering, larceny, possession of stolen property and possession of burglary tools. On September 30, 1969, the respondent retracted his pleas of not guilty and pled guilty to one count of attempted larceny. The remaining charges were dismissed. On October 17, 1969, the respondent was sentenced to one year in Atlantic County jail. That sentence was suspended and the respondent was placed on probation for one year.

On June 25, 1969, the Atlantic County Sheriff's Department photographed and fingerprinted respondent (P-2).

On August 9, 1970, the respondent was arrested and charged with possession of stolen property. The charges were dismissed.

On January 11, 1971, the respondent was arrested and charged with breaking and entering and larceny. On January 26, 1972, the charges were dismissed by the Atlantic County Grand Jury.

In 1971, the respondent was arrested and charged with robbery with violence by the Hartford, Connecticut, Police Department. On December 9, 1971, the respondent was found not guilty of the charge.

On February 24, 1973, the respondent was arrested and charged with possession of an offensive weapon. On March 16, 1974, the charge was dismissed.

On March 16, 1973, the respondent was charged with larceny by Wayne Baznell of Egg Harbor, New Jersey, for an offense that occurred on January 21, 1973. On May 9, 1973, the respondent was arrested and convicted of larceny. The respondent was sentenced to 90 days in Atlantic County jail. In addition, he was fined $50.00 (P-3).

On March 12, 1975, the respondent was arrested and charged with molesting and interfering in Atlantic City, New Jersey. On March 25, 1975, the charge was dismissed without prejudice.

On April 12, 1975, the respondent was arrested and charged with assault with intent to rape. On April 18, 1975, the respondent was fined $100.00 and $15.00 court costs on an amended charge of simple assault and battery.

On November 18, 1975, the respondent was arrested and charged with atrocious assault and battery in violation of N.J.S.A. 2A:113-8 (P-5). On that date, respondent was fingerprinted (P-6). On February 19, 1976, the charges were downgraded to simple assault and battery and the respondent was found not guilty.

On September 16, 1983, the respondent was arrested and charged with unlawful taking for an incident which occurred on September 10, 1983 (P-4). On November 2, 1983, the complaint was withdrawn and the matter dismissed.

On February 10, 1983, the respondent signed a New Jersey Casino Control Commission Personal History Disclosure Form 2A in the presence of Dorothea L. Fraleigh, notary public of New Jersey. In response to question 16, "Have you even been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else?" respondent checked no (P-1).

On March 29, 1984, Detective Duane Daniels of the New Jersey State Police, Division of Gaming Enforcement, conducted a telephonic interview with the respondent concerning his apparent failure to reveal his arrest record. Respondent denied that he had ever been arrested stating that "it must have been my cousin." However, the documentary evidence reveals arrest records for one Juan Ivan Maldonado with matching social security numbers on P-1, P-3, P-4 and P-5; identical fingerprint matches on P-2 and P-6; similar physical descriptions including same date of birth, hair color, eye color, height and weight on P-1, P-2, P-3, P-4 and P-5; and what appears to be identical signatures to those of respondent on P-1, P-2, P-6 and P-7.

After being given the opportunity to testify and rebut any or all of the State's case and to present any evidence of good character, honesty and integrity with regard to his application for a casino license, Mr. Maldonado elected not to testify. Therefore, all of the preceding evidence is unrebutted and believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-90(e)

Under section 90(e) of the Act, which incorporates the provisions of 86(b), Mr. Maldonado was required to provide information, documentation and assurances required by the Act or requested by the Commission, and failure of the respondent to reveal any fact material to qualification or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria may result in the denial of respondent's casino employee application and the respondent's casino hotel registration being revoked, suspended, limited or restricted.

I **CONCLUDE** from the unrebutted testimony and documentary evidence that the respondent willfully failed to disclose his arrest record on his New Jersey Casino Control Commission Personal History Disclosure Form 2A.

(B) N.J.S.A. 5:12-89(b)(2)

Under section 89(b)(2) of the Act, Mr. Maldonado's application for a casino employee license requires that he establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. When the Division opposes licensure under section 89(b)(2) of the Act, it is incumbent upon the applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corp. and the Gemm Co. for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of the applicant be scrutinized closely. Boardwalk Regency Corp. at 2.

Respondent's failure to testify or present any witnesses on his own behalf, in addition to his failure to disclose, after being advised of his burden of proof, leads me to **CONCLUDE** that respondent has failed to establish by any evidence whatsoever his reputation for good character, honesty and integrity.

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's hotel employee registration. Given the fact that respondent knowingly failed to disclose his arrest record, respondent's registration must be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the hotel employee registration (registration number 32784-40) held by Juan Maldonado be **REVOKED** and that Mr. Maldonado's application for licensure as a casino employee be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

7-23-85
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

August 1, 1985
DATE

Bernadette N. Truex
CASINO CONTROL COMMISSION

Mailed to Parties:

August 2, 1985
DATE

Gabriel Rozzo
OFFICE OF ADMINISTRATIVE LAW

ij/ee

484

OAL DKT. NO. CCC 2544-85

WITNESS LIST

Detective Duane Daniels, New Jersey State Police, Division of Gaming Enforcement

DOCUMENTS IN EVIDENCE

P-1 Personal History Disclosure Form, dated February 10, 1983

P-2 Atlantic County Sheriff's office fingerprint card, dated June 25, 1969

P-3 Egg Harbor City Police Department arrest report, dated May 9, 1973

P-4 Egg Harbor City Police Department incident report, dated September 10, 1983

P-5 Pleasantville Police Department arrest report, dated November 18, 1975

P-6 Pleasantville Police Department fingerprint card, dated November 18, 1975

P-7 Return receipt, dated January 24, 1985, displaying the signature of Juan Maldonado

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-CSI-19
OAL DOCKET NO. CCC 8394-84
APPLICATION NO. 795-70

APPLICATION OF A. MARRUCCA & SONS, INC., FOR A CASINO SERVICE INDUSTRY LICENSE

FINAL ORDER

A hearing having been held in this matter before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 26, 1985,

IT IS on this 24th day of JULY 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon A. Marrucca & Sons, Inc., the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8394-84

AGENCY DKT. NO. 84-CSI-19

A. MARRUCCA & SONS, INC.,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

James N. Butler, Jr., Esq., for the petitioner (Lawson & Kapalko, attorneys)

Patricia Wild, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record closed: April 2, 1985 Decided: May 15, 1985

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the application of A. Marrucca & Sons, Inc. for a license as a casino service industry. The Casino Control Commission (Commission) advised the petitioner that there was a substantial possibility that its application would be denied based on the objections of the Division of Gaming Enforcement (Division) as set forth in its letter of July 17, 1984. In summary, the Division recommended that the petitioner not be licensed based on the following allegations:

(1) That the petitioner's employment of certain convicted bookmakers raises a question as to the good character, honesty and integrity of the petitioner's principal employees.

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(2) That the explanations given by the petitioner's principal employees, James (Giacoma) Marrucca and Anthony Marrucca, as to their financial involvement in A-J-J, Inc., and their ongoing business relationship with Russell "Babe" Miraglia raises questions regarding their good character, honesty and integrity.

(3) That the personal relationship between the principal employees of the petitioner and Russell "Babe" Miraglia, an alleged career offender, renders the petitioner's licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86(f).

(4) That James (Giacoma) Marrucca, a principal employee of the petitioner, failed to demonstrate candor with the Division's representatives regarding the petitioner's association with Michael Marko and Carl Jacobson in violation of N.J.S.A. 5:12-86b.

The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The prehearing conference in this matter was held on January 3, 1984, before Administrative Law Judge Ralph J. Tolomeo. At that time, the parties agreed that the issues in this matter are:

(a) Whether the petitioner can establish its good character, honesty and integrity as required by law insofar as the hiring of individuals convicted of gambling offenses.

(b) Whether the petitioner can establish its good character, honesty and integrity as required by law insofar as the longstanding relationship between the petitioner's principal employees and Russell "Babe" Miraglia.

(c) Whether or not the petitioner's relationship through its principal employees with Russell "Babe" Miraglia, a reputed career offender, is of such a nature to determine that the association renders licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86(f).

(d) Whether petitioner can establish its good character, honesty and integrity as required by law insofar as the financial transaction and ownership of A-J-J, Inc., which involves the principal employees of the petitioner and the wife of Russell "Babe" Miraglia.

(e) Whether the petitioner has established its good character, honesty and integrity as required by law insofar as the denial of James (Giacoma) Marrucca of certain meetings with Michael Marko.

The hearing in the matter took place on April 2, 1985, before the undersigned and the record closed on that date.

PETITIONER'S EMPLOYEES ISSUE

James (Giacoma) Marrucca testified that he graduated from high school and served in the armed services, and in 1960 he started A. Marrucca & Sons, Inc., a wholesale produce business in Asbury Park, with his brother, Anthony, and a sister. Prior to that time, his father had operated a small produce business. Currently, the petitioner has in its employ between 40 and 55 people and this number increases during the summer months. According to Mr. Marrucca, the petitioner is located in a depressed area and has always employed persons from the neighborhood. The petitioner employs persons with criminal records and approximately 25 percent of its employees have some sort of prior criminal record. In the past, the petitioner has operated a trade program for employees and was able to get a tax credit for the program.

Mr. Marrucca stated that he read someplace that companies could get a tax credit for hiring minority persons, persons released from prisons and persons participating in prison work release programs, and he thought that the petitioner could qualify for this credit. Mr. Marrucca told his accountant, Herbert Popok, about the program and assumed that the accountant would work out the details for the tax credit with his sister, who is the bookkeeper for the petitioner.

In the latter part of 1980, Mr. Marrucca was contacted by Russell (Rosario) Miraglia a/k/a "Babe" Miraglia, about a job so that he could be released from prison and participate in a work release program. Mr. Miraglia is a friend of the Marrucca family

and Mr. Marrucca gave him a job with the petitioner. The prison officials allowed Mr. Miraglia to participate in the work release program with this job (R-3) and while working for the petitioner, Mr. Miraglia took telephone orders in the office and sometimes made small deliveries to customers. After completing the work release program, Mr. Miraglia left the petitioner's employment for a while, and he is currently again employed by the petitioner. Through the efforts of Mr. Miraglia, the petitioner also hired Joseph Napolitano (R-4) and Peter Cardilla so that they could participate in work release programs. Mr. Napolitano and Mr. Cardilla left the employment of the petitioner after completing their work release programs. Mr. Marrucca knew Mr. Napolitano and Mr. Cardilla before they were incarcerated and was aware that they as well as Mr. Miraglia had been in jail for gambling offenses.

In his sworn interview with the Division's representative, Deputy Attorney General Rosemary Quinn, Mr. Marrucca stated that he hired Mr. Miraglia because the petitioner could receive a tax credit (R-2, p. 17) and because Mr. Miraglia was a family friend (R-2, p. 15). At the hearing, Mr. Marrucca stated that he hired Mr. Miraglia because he was a personal friend and that he hoped to receive a tax credit for the petitioner and that he would have hired him even if he did not think that the petitioner could get the tax credit.

At the hearing it was also established that the petitioner did not get a tax credit for hiring Mr. Miraglia, Mr. Napolitano or Mr. Cardilla. Mr. Marrucca explained that the petitioner did not take a tax credit since these three individuals did not get the necessary documents from the state before they were hired. Mr. Popok, the petitioner's accountant, confirmed that Mr. Marrucca had called him about the tax credit and stated that it was not until he filled out the tax forms that he found that the three men did not have the required certificates; therefore, the petitioner did not claim the credit.

As to his criminal record, Mr. Miraglia testified that in 1938 he was arrested for an alcohol beverage violation, selling alcoholic beverages to a minor, and that the matter was dismissed. At the time of this arrest, Mr. Miraglia owned the bar but was not present when someone served a drink to a pregnant girl who was under age. In 1948, Mr. Miraglia was arrested for bookmaking. At that time, Mr. Miraglia was operating a bar and restaurant and knew that people were gambling there even though he was not personally involved. This charge was dismissed. In 1948, Mr. Miraglia was arrested for

gambling and the charge was dismissed. Mr. Miraglia admitted that he had been playing dice at the time. In 1964, Mr. Miraglia was in a local tavern when everbody was arrested for gambling. Mr. Miraglia was not gambling at the time and this charge was dismissed. In 1972, Mr. Miraglia was arrested for bookmaking, specifically taking horse bets over the phone. Mr. Miraglia admitted that he was taking bets from about four customers, that he received a few hundred dollars in bets each day, that he laid off the bets with another person, and that he had engaged in these activities for approximately six months. Mr. Miraglia pled guilty to the offense, was given a two-to-three-year jail sentence and a $3,000 fine. Mr. Miraglia was in jail for two years. In 1979, Mr. Miraglia was arrested for bookmaking, pled guilty, was given a nine-month jail sentence, and participated in a work release program while working for the petitioner.

In addition to these arrests and convictions admitted by Mr. Miraglia during his testimony, the FBI report shows two additional arrests in 1948, two arrests in 1970 and one arrest in 1978. All of these arrests were either for gambling or bookmaking violations but the final depositions as to these arrests are not reflected in the report (R-1). The Division also presented several newspaper articles regarding Mr. Miraglia's arrests for gambling during the 1970's, which describe him as an underworld gambling kingpin in Monmouth County (R-7).

Mr. Miraglia denied that he was a big-time bookie but admitted that he was a gambler. Mr. Miraglia is aware that he has been identified as a gambling kingpin in the newspapers but denied the truth of the statements contained in the newspaper articles. According to Mr. Miraglia, he has not participated in any illegal gambling activities since his release from jail in 1981 and he is now rehabilitated.

The FBI report regarding Peter Cardilla shows six arrests for bookmaking or gambling and four convictions between 1971 and 1979 (R-5), and the FBI report regarding Joseph Napolitano shows one arrest and conviction for assault and nine arrests for numbers, lottery, gambling or bookmaking with three convictions between 1952 and 1981 (R-6).

Mr. Marrucca testified that the petitioner has hired a number of persons participating in work release programs and that the Division has raised a question regarding only the three men who had gambling convictions. The petitioner has been complimented by the State Department of Corrections for its participation with the work

release programs. While it held a temporary license, Mr. Marrucca stated that the petitioner was never informed by the Commssion or Division that it could not participate in work release programs or that it could not hire persons who had been convicted of certain offenses.

I **FIND** the facts as stated above regarding this issue are not in dispute and in the absence of any showing of illegal activities while these three men were employed by the petitioner, I **CONCLUDE** that petitioner's practice of hiring persons participating in work release programs or persons with prior criminal records is in the public interest and does not reflect negatively on its reputation for good character, honesty and integrity.

A-J-J, Inc. Issue

At the hearing, both Mr. Marrucca and Mr. Miraglia testified about A-J-J Inc. Both of them stated that in 1981, Mr. Miraglia found out that an acquaintance wanted to sell a tavern, two residencies, a commercial building and an empty lot for $150,000 and Mr. Miraglia thought that he could get all the properties for $100,000. Mr. Miraglia spoke to James Marrucca about entering into an association to buy the properties and Mr. Marrucca agreed to participate in the venture if Mr. Miraglia could get the properties for $100,000. Mr. Marrucca was interested since he needed the empty lot for the expansion of the petitioner's business. Mr. Miraglia arranged to purchase the properties for $100,000 and A-J-J, Inc. was established to purchase and manage the properties (J-1). The stockholders of A-J-J, Inc. are James Marrucca, Anthony Marrucca, Barbara Konovitz and Julia Miraglia, who is Mr. Miraglia's wife, and each of the stockholders was to pay $12,500 for a 25 percent interest in A-J-J, Inc. Julia Miraglia's share was paid by the two Marruccas and she was to receive 25 percent of the profits less the $12,500 original investment made on her behalf by the two Marruccas. This $12,500 payment on behalf of Mrs. Miraglia was a loan and Mrs. Miraglia signed over her shares in A-J-J, Inc. to the Marruccas as security. Mrs. Miraglia was not to pay any interest on the loan since Mr. Miraglia had put together the deal. After A-J-J, Inc. purchased the properties, the alcohol beverage license for the tavern was transferred to Anthony Marrucca and for awhile Anthony Marrucca operated the tavern. The commercial building and empty lot were sold to the petitioner and all of the other properties owned by A-J-J, Inc. either have been sold or are about to be sold by Mr. Miraglia on behalf of A-J-J, Inc. Sometime after A-J-J, Inc. was started, Mrs. Miraglia put in $10,000 since there were bills that had to be paid and later, A-J-J, Inc. paid back this amount to her.

The Division disputed the testimony of both Mr. Marrucca and Mr. Miraglia as to the formation and financial interests in A-J-J, Inc. based on the fact that the stock share issued to Mrs. Miraglia was dated October 6, 1981, and the reverse side indicates that the stock transfer by Mrs. Miraglia took place on October 27, 1982 (P-1). Mr. Miraglia stated that this might have been a typographical error and indicated that there was also an inconsistency between the printed portion of the stock certificate, which indicated that 40 shares were authorized (P-1), and the fact that only 20 shares had been issued, five shares to each stockholder.

Also, Deputy Attorney Wild questioned why the incorporating papers filed with the secretary of state named only the two Marruccas as shareholders (J-1), and neither Mr. Marrucca or Mr. Miraglia offered an explanation. Mr. Marrucca indicated that the details of establishing A-J-J, Inc. were handled by his attorney. Ms. Wild also questioned why the stock was in the name of Mrs. Miraglia rather than in her husband's name. Mr. Miraglia stated that he wanted his wife to have the interest in A-J-J, Inc.

Based on the testimony, I **FIND** that the relevant facts as to A-J-J, Inc. issue are not in dispute and I accept Mr. Marrucca and Mr. Miraglia's testimony regarding the set up of A-J-J, Inc. The legal and financial arrangements for A-J-J, Inc. appear to be somewhat casual which is not unreasonable in light of the fact that the Marruccas and the Miraglias are longtime family friends. In the absence of any showing of wrongdoing, I **CONCLUDE** that the facts as to this issue do not adversely affect the petitioner or its principal employees' reputations for good character, honesty and integrity, nor do these facts render the petitioner's licensure inimical to the policies of the Casino Control Act.

MICHAEL MARKO ISSUE

As to the petitioner's business relationship with Michael Marko, Mr. Marrucca stated that at the time when Harrah's Marina Casino Hotel (Harrah) was first started, the petitioner hired Carl Jacobson to get customers. Mr. Jacobson was not paid a salary but worked on commission. Mr. Jacobson arranged for a meeting with Michael Marko,

who was employed as the food and beverage director of Harrah. Mr. Marrucca, Mr. Marko and Mr. Jacobson had a meeting at Harrah to discuss a possible contract for produce. According to Mr. Marrucca, he could not recall whether or not he met again with Mr. Marko and stated that he worked with several purchasing agents employed by Harrah for an approximate three-month period and then his business arrangement with Harrah was terminated since Harrah was not satisfied with the petitioner's product. Mr. Marrucca stated that he may have met Mr. Marko at the petitioner's facility on another occasion but he was not sure. Mr. Marrucca stated that it was the petitioner's normal practice to have potential customers inspect its premises and that he, his brother or a foreman probably had taken Mr. Marko and other representatives of Harrah on a tour of the petitioner's facility. Deputy Attorney General Wild confronted Mr. Marrucca with his statements at his interview with Ms. Quinn to the effect that he met Mr. Marko only once and that he had no dealings with Mr. Marko (R-2 at p. 5, 12-13). Mr. Marrucca stated that he recalled meeting Mr. Marko once and again stated that he did not recall any other meetings with Mr. Marko. As to the word "dealing", Mr. Marrucca stated that he meant business dealing and that he said he had no dealings with Mr. Marko since the actual negotiations for the product sales were conducted with the various purchasing agents employed by Harrah.

The petitioner had introduced into evidence part of Mr. Marko's testimony on his own behalf at a hearing regarding his licensure as a casino key employee, Michael Marko v. Division of Gaming Enforcement, OAL DKT. CCC 263-84, decided, (Sept. 14, 1984), aff'd, Casino Control Comm. (November 27, 1984) (R-8). During this testimony, Mr. Marko stated he met Mr. Marrucca twice but no identification is made as to whether he was referring to James or Anthony Marrucca (R-8).

Based on the testimony and exhibits, I accept James Marrucca's testimony that he recalls meeting Mr. Marko only once, and I **FIND** that the pertinent facts as to this issue are those set forth in Mr. Marrucca's testimony. Also, I **FIND** that there is no proof before me of any illegal or improper arrangement among the petitioner, the two Marruccas, Mr. Jacobson, and Mr. Marko or any other representatives of Harrah. It should also be noted that there is no indication of any improper action by the two Marruccas in the initial or final decision in the Marko matter. Therefore, I **CONCLUDE** that James Marrucca did not lie or try to mislead the Division's representatives as to his business activities or meetings with Mr. Marko and that his statements regarding this issue

reflected his best recollection of what occurred and that his action does not reflect adversely on his good character, honesty and integrity or the good character, honesty and integrity of the petitioner.

At the hearing, Mr. Popkins, the accountant employed by the petitioner, testified that he has known James Marrucca and his brother for approximately 20 years and that they have an excellent reputation for being persons of good character, honesty and integrity. Francis C. Tullano, a mortgage consultant, testified that he has known James Marrucca and his brother for approximately ten years and that they have a reputation for being persons of good character, honesty and integrity. Further, Mr. Tullano indicated that he is a coach for various teams in the Asbury Park area and that the petitioner has regularly acted as a sponsor for such teams. According to Mr. Tullano, the petitioner's principal employees go out of their way to sponsor civic activities. Lastly, Mayor Ray Kramer of Asbury Park stated in his letter that he has known the two Marruccas for many years and considers them to be persons of good character, honesty and integrity, good businessmen and participants in many civic activities (P-2).

For the reasons stated above, I **CONCLUDE** that A. Marrucca & Sons, Inc. has shown that it qualifies for a license as a casino service industry and I **ORDER** that such a license be issued to the petitioner.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 15, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

May 17 1985
DATE

Paula Weiss
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 2 1 1985
DATE

Ronald L. Lukerpko
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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APPENDIX

EXHIBITS ADMITTED INTO EVIDENCE:

JOINT EXHIBIT:

J-1 Certificate of Incorporation of A-J-J, Inc.

FOR THE PETITIONER:

P-1 Certificate of Sharers in A-J-J, Inc. issued to Julia A. Miraglia

P-2 Letter from Mayor Ray Kramer of Asbury Park City to Chairman Walter N. Reed, dated December 20, 1984

FOR THE RESPONDENT:

R-1 Criminal Record Information regarding Russell (Rosario) Miraglia

R-2 Sworn statement of James Marrucca on May 24, 1984

R-3 Request for Investigation of Work-Study Release Site submitted by Russell (Rosario) Miraglia

R-4 Request for Investigation of Work-Study Release Site submitted by Joseph Napolitano

R-5 Criminal Record Information regarding Peter Cardilla

R-6 Criminal Record Information regarding Joseph Napolitano

R-7 A number of newspaper articles appearing in the Asbury Park Evening Press relating to individuals involved in illegal gambling activities

R-8 Transcript of part of the testimony of Michael Marko during the administrative hearing before Administrative Law Judge Metzger in Michael Marko v. Division of Gaming Enforcement, OAL DKT. CCC 263-84, decided, (Sept. 14, 1984), affirmed, (Casino Control Comm. (November 27, 1984).

WITNESSES

FOR THE PETITIONER:

Herbert Popok
Russell (Rosario) Miraglia
Francis A. Pullano
James (Giacoma) Marrucca

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-333
OAL DOCKET NO. CCC 9141-84
REGISTRATION NO. 42333-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	FINAL ORDER
EDWARD McCAFFERTY,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 29, 1985;

IT IS on this 5th day of September 1985, ORDERED that the initial decision in this matter is modified as follows:

(1) That portion of the initial decision which states that rehabilitation under section 91(d) of the Act must be demonstrated by a preponderance of the credible evidence in the record is rejected. Section 80 of the Act, the general provision governing licensure, states, "It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications..." N.J.S.A. 5:12-80(a). While section 91(d) indicates only that rehabilitation must be "affirmatively demonstrated," the Commission does not accept

demonstration of rehabilitation by a lesser standard than that required for the demonstration of qualifications generally, i.e. by clear and convincing evidence. Therefore, the ALJ's statement that Mr. McCafferty had not established "by a preponderance of the credible evidence that he has been rehabilitated with respect to the [drug distribution] conviction," is in error. The error is harmless, however, since we agree that the evidence of the applicant's rehabilitation was inadequate under either standard.

(2) In view of the existing basis for disqualification under section 86(c)(3), we reject the ALJ's section 86(c)(4) analysis as unnecessary. Having found that the applicant was convicted of disqualifying offenses pursuant to section 86(c)(3, it is unnecessary to consider whether such acts warrant disqualification pursuant to section 86(c)(4). Accordingly, that portion of the initial decision concluding that the applicant's sale of controlled dangerous substance to an undercover officer are "acts which are inimical to the policies of the Casino Control Commission" (Init dec. at 6) is rejected.

IT IS FURTHER ORDERED that the casino hotel employee registration of Edward McCafferty is revoked based upon the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Edward McCafferty is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Edward McCafferty, the Division of Gaming Enforcement, the Office of Administrative Law, and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 9141-84

AGENCY DKT. NO. 84-333

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

EDWARD MC CAFFERTY,

Respondent.

Paul Vagianos, Deputy Attorney General. on behalf of petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Glen Stanton, Law Clerk, pursuant to New Jersey Court Rules 1:21-3c

Edward McCafferty, respondent, pro se

Record Closed: March 12, 1985 Decided: April 26, 1985

BEFORE **RALPH J. TOLOMEO,** ALJ:

This matter concerns allegations set forth in a complaint filed by the Division of Gaming Enforcement, petitioner, with the Casino Control Commission seeking revocation of respondent's registration as a casino hotel employee, pursuant to N.J.S.A. 5:12-1 et seq. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference by way of telephone was held on February 1, 1985, at which time the parties agreed the issues to be determined are:

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(a) Whether the respondent is disqualified for registration, pursuant to N.J.S.A. 5:12-91b and 5:12-86c, as a result of the alleged fact that he pled guilty to three charges of distribution of a controlled dangerous substance, a violation of N.J.S.A. 24:21-19a1;

(b) Whether the respondent's action relating to this alleged criminal activity makes his continued registration inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4); and

(c) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-91d.

The basic facts in this matter are undisputed. In February 1984, respondent, Edward McCafferty, was employed as a porter by Resorts International Hotel Casino. He then and currently holds a casino hotel employee registration no. 423330-40. On February 20, 1984, Mr. McCafferty was contacted by an undercover law enforcement officer to whom he made two "sales" of one-eighth of an ounce of methamphetamine, a controlled dangerous substance. The purchase price for each transaction on that date was $175. At the time, respondent gave the undercover officer his phone number and advised that he could provide more methamphetamine if it was wanted. Mr. McCafferty also advised that if a larger quantity were purchased, the price would be cheaper and that he would check with his "supplier" for prices of one-quarter and one-half pounds of methamphetamine. He would then call and indicate the price for these quantities.

On February 28, 1984, respondent called the undercover officer and advised he could provide one ounce of methamphetamine for $850. The undercover officer agreed to purchase the same and the sale was consummated at the agreed price on that date. At that time, Mr. McCafferty indicated he still didn't have a price on the one-quarter or one-half pound quantities but that he would advise when he obtained the information. Thereafter, on March 7, 1984, Mr. McCafferty sold the same undercover officer approximately 1.4 ounces of methamphetamine for $1,000. Respondent also introduced the undercover officer to his supplier and, thereafter, other controlled dangerous substance transactions between the supplier and the undercover officer took place.

On May 29, 1984, Mr. McCafferty was indicted in Atlantic County, New Jersey and was charged with possession of a controlled dangerous substance in four counts

(N.J.S.A. 24:21-20(a)1); possession of a controlled dangerous substance with intent to distribute, four counts (N.J.S.A. 24:21-19a(1)); and distribution of a controlled dangerous substance, four counts (N.J.S.A. 24:21-19a(1)). He initially pled not guilty to these charges; however, on July 2, 1984, Mr. McCafferty pled guilty to three counts of distribution of methamphetamine which occurred on February 20 and February 28, 1984.

On November 30, 1984, Mr. McCafferty was sentenced to five years' probation concurrently on the three distribution charges with conditions of probation to include five weekends of incarceration, out-patient therapy and a forfeiture of monies founded at the time of his arrest. In addition, all nine remaining charges (counts) of the indictment were dismissed.

All of these facts were established through the introduction of certified judgment of conviction and police reports offered by petitioner and not disputed by respondent.

Respondent acknowledged this conduct and the convictions arising therefrom. On his behalf, his mother, Madeline Thomas, testified that her son, Edward McCafferty, had a nervous breakdown at the age of 17. She indicated it took her about five years to rehabilitate him and that he finally obtained a job at Resorts. She believed that he was getting mixed up with the wrong people and that she had to do something. She testified that she was the one that turned him in and it is her belief that the undercover law enforcement officer "set Edward up." She further testified that he has never done anything like this before and she did not believe he would do anything in the future. She further testified that he is currently in rehabilitation and is going to a psychiatrist every month. She testified that her son has only a little job and that he needs the same for his rehabilitation. In addition, Mr. McCafferty offered the following documents:

R-1 A Records Release Authorization signed by Edward McCafferty

R-2 Status Report, dated July 27, 1984, from the T.A.S.C. stating "Mr. McCafferty continues to make good progress through T.A.S.C. participation. He continues to attend counselling sessions at the Mental Health Center as directed. He attends Narcotics Anonymous meetings on a regular basis and reports to T.A.S.C. Mr. McCafferty takes psychiatric medication but has remained drug free since his initial

T.A.S.C. evaluation. T.A.S.C. would urge that the current treatment plan remain in effect."

R-3 T.A.S.C. Status Report, dated November 5, 1984, stating "Mr. McCafferty continues to cooperate in all respects with the T.A.S.C. office. He last reported on October 22, 1984, and submitted to urine screen which was negative for all drugs tested. Mr. McCafferty continues to report to the Atlantic Mental Health Center for counselling and Narcotics Anonymous meetings as directed. T.A.S.C. would recommend a probationary sentence if at all possible so that Mr. McCafferty can remain employed and can continue to stay drug free."

R-4 T.A.S.C. Status Report, dated December 17, 1984, which states "Mr. McCafferty was sentenced to five years probation on November 30, 1984 with the special condition that he comply with the Atlantic County T.A.S.C. office. Thus far he had complied with all conditions and he is remaining drug free. Reinstatement to casino employment is recommended as a necessary part of his overall treatment plan."

R-5 T.A.S.C. Report, dated November 21, 1984, stating "Mr. McCafferty does not represent a traditional T.A.S.C. enrollment. The mental health issues are as significant as the drug treatment issues. Mr. McCafferty has cooperated to the fullest extent thus far by attending the Atlantic Mental Health Center to monitor his medication. He reports to Narcotics Anonymous as directed, and has submitted drug-free urine to T.A.S.C. Since his admission, a probationary sentence is recommended."

R-6 T.A.S.C. Evaluation Report, dated August 9, 1984, stating "Mr. McCafferty reports using methamphetamine several times per week following his employment (through work opportunity center) at Resorts International, until the time of the present arrest. He has been diagnosed as schizophrenic and is currently on medication through a psychiatrist at the Atlantic Mental Health. Alcohol abuse is not significant but abstinence is recommended because of the cross addiction possibility. Weekly counselling at the Mental Health Center is

recommended, but therapy direction will lie with the mental health counsellor. T.A.S.C. will monitor AA and NA attendance at three meetings per week in addition to T.A.S.C. urine. Mr. McCafferty has been employed at Resorts International since June 22, 1982, as a special utility stewart. This position is opportunity for Mr. McCafferty and appears critical for his continued sobriety."

R-7 Letter dated November 16, 1984, from Joel R. Miller, a licensed clinical psychologist indicating an examination and evaluation of Mr. McCafferty which indicates a self-admitted drug abuse history commencing at age 17. This report goes on to state that in the psychologist's opinion Mr. McCafferty does not pose any particular threat to society and recommends that every consideration be made to provide a community based supervision program which might be monitored through both the probation department and the community mental health professional.

R-8 Letter dated February 25, 1985, from Jane E. Packer, M.A., staff psychologist of the Atlantic Mental Health Center Inc., indicating that Mr. McCafferty was first seen on July 5, 1984, and has attended eight sessions since that time. Order indicates that he is being seen on a monthly basis and will continue to do so for an undetermined period of time until his therapist and probation officer agree that termination is appropriate.

R-9 Letter dated February 25, 1985, from Charles M. Morvey, principal probation officer of Atlantic County, indicating that as of that date, Mr. McCafferty has been cooperating with probation officer and maintains a friendly attitude.

Based on the undisputed facts as found, I **CONCLUDE** that the Division has shown Mr. McCafferty was convicted of three separate counts of distribution of controlled dangerous substances, all statutory disqualifiers.

The Casino Control Act provides that a person can overcome the prohibitions against registration by affirmatively demonstrating his rehabilitation and N.J.S.A.

5:12-91c sets forth the following eight specific criteria to be considered to determine whether or not a person has been rehabilitated:

1. Nature and duties of the registrant's position.
2. The nature and seriousness of the offense.
3. The circumstances under which the offenses occurred.
4. The date of the offense.
5. The age of the registrant when the offense was committed.
6. Whether the offense was an isolated or repeated incident.
7. Any social conditions which may have contributed to the offense.
8. Any evidence of rehabilitation including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional participation in correction work-release programs, or recommendation of persons who have or have had the registrant under their supervision.

The respondent, Mr. McCafferty, has had a self-admitted drug problem since the age of 17. Through his mother's efforts, he obtained employment at Resorts International in 1982. In February 1984, he made four separate sales to an undercover law enforcement officer of methamphetamine in the total dollar amount of $2,100. He also indicated that larger quantities of methamphetamine could be obtained and introduced the undercover officer to a co-worker at Resorts who was Mr. McCafferty's supplier. It is also significant that Mr. McCafferty has not yet completed his first year of a five-year probationary term imposed by the sentencing court and all concerned with his probationary supervision and treatment indicate that it is to be continued with no indication that his rehabilitation is complete as of this time.

Based on all of the facts presented, I **CONCLUDE** that Mr. McCafferty has not established by a preponderance of the credible evidence that he has been rehabilitated with respect to the convictions. I also **CONCLUDE** that the four separate sales to the undercover law enforcement officer are acts which are inimical to the policies of the Casino Control Commission.

Based on the foregoing, it is **ORDERED** that the respondent's registration be and is hereby **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 26, 1985
DATE

Ralph J. Tolomeo
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

April 30, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 30 1985
DATE

Ronald L. Parker/pkb
OFFICE OF ADMINISTRATIVE LAW

ml/E

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Packet of Superior Court, Atlantic County, dated May 29, 1984, Indictment No. 0780-5-84-B (23 counts)

P-2 New Jersey Division of State Police Criminal History Summary Record of Edward McCafferty

P-3 New Jersey Police Department Investigation Report, dated 3-9-84

P-4 Police Department Supplementary Investigation Report, dated February 20, 1984

P-5 Police Department Supplementary Investigation Report, dated February 28, 1984

P-6 Continuation of P-5

P-7 Atlantic City Police Department Arrest Report, dated May 9, 1984

P-8 New Jersey Superior Court, Atlantic County, Judgment of Conviction

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 82-EL-19 & 20
(CONSOLIDATED)
OAL DOCKET NO. CCC 3313-84
NOS. CCC 1807-83 & CCC 1809-83
(ON REMAND)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

LAWRENCE MERLINO AND
PHILIP LEONETTI,

Respondents.

FINAL ORDER

A hearing in this matter having been conducted in the Office of Administrative Law and an initial decision by the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission) recommending denial of the petition to include the name of Lawrence Merlino upon the exclusion list, but approving the petition to include the name of Philip Leonetti upon the list pending resolution of the indictment filed against him on September 18, 1984, in the United States District Court of New Jersey; and both parties having filed exceptions to the initial decision; and the Commission, having considered the entire record of these proceedings, resolved at its public meeting of August 14, 1985, to substantially modify the initial decision and to find additional grounds for the exclusion of respondent Leonetti and further find grounds for the exclusion of respondent Merlino,

IT IS on this 17th day of September 1985, ORDERED that the initial decision in this matter is modified as follows for reasons to be stated in a Commission decision which will be hereafter promulgated:

(1) To the extent that the reference in the initial decision to "competent evidence" represents the application of the so-called "residuum rule" embodied in N.J.A.C. 1:1-15.8 rather than the standard established by N.J.S.A. 5:12-107(a)(6), the initial decision is rejected;

(2) That portion of the initial decision concluding that no adverse inferences can be drawn from respondent Leonetti's invocation of his Fifth Amendment right to silence because of a reasonable apprehension of prosecution is rejected;

(3) That portion of the initial decision which states that, should respondent Leonetti subsequently be acquitted of the charges contained in his pending indictment there is no cause for exclusion, is rejected;

(4) Those portions of the initial decision finding that the Division of Gaming Enforcement (DGE) failed to prove that respondent Leonetti is a career or professional offender or an associate of a career or professional offender, or that, apart from his pending indictment, respondent's presence in a licensed casino establishment is inimical to the interest of the State or licensed gaming therein are rejected;

(5) The Commission finds that respondent Leonetti is a career or professional offender within the meaning of N.J.A.C. 19:48-1.3(a)(1);

(6) The Commission finds that respondent Leonetti is an associate of a career or professional offender within the meaning of N.J.A.C. 19:48-1.3(a)(2);

(7) The Commission finds that, even apart from his pending indictment, respondent Leonetti's presence in a licensed casino is inimical to the interest of the State or licensed gaming therein within the meaning of N.J.A.C. 19:48-1.3(a)(4);

(8) Those portions of the initial decision finding that the DGE failed to prove that respondent Merlino is a career criminal offender or that his presence in a licensed casino establishment is inimical to the interest of the State or of licensed gaming therein are rejected;

(9) The Commission finds that respondent Merlino is a career criminal offender within the meaning of N.J.A.C. 19:48-1.3(a)(1);

(10) The Commission finds that respondent Merlino's presence in a casino hotel is inimical to the interest of the State or of licensed gaming therein pursuant to N.J.A.C. 19:48-1.3(a)(4).

IT IS FURTHER ORDERED that respondents Leonetti and Merlino are declared excluded persons pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that respondents Leonetti and Merlino shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City; and

IT IS FURTHER ORDERED that a copy of this order shall be served upon the respondents, the Office of Administrative Law, the Division of Gaming Enforcement, and the authorized

agents of all currently operating casinos in New Jersey within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
JAN 31 1985
CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 3313-84
(OAL DKT. NOS. CCC 1807-83 & CCC 1809-83 ON REMAND)
AGENCY DKT. NOS. 82-EL-19 & 82-EL-20
(CONSOLIDATED)

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,

Petitioner,

v.

LAWRENCE MERLINO AND PHILIP LEONETTI,

Respondents.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Howard M. Barman, Deputy Attorney General, prior to the remand) (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Michael L. Testa, Esq., for the respondent Mr. Merlino (Harold I. Garber, Esq., prior to the remand) (Basile, Testa & Testa, attorneys)

Edwin J. Jacobs, Jr., Esq., for the respondent Mr. Leonetti (Tort, Jacobs, Todd & Bruso, P.C., attorneys)

Record Closed: October 22, 1984 Decided: January 31, 1985

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BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, seeks to have the names of Lawrence Merlino and Philip Leonetti, respondents, placed upon the Casino Control Commission's (Commission) list of persons who are to be excluded or ejected from any licensed casino hotel, pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq., on the allegations that the respondents are career criminal offenders, associates of career or professional offenders and whose presence in a licensed casino would be inimical to the state or licensed gaming. The respondents opposed the actions.

PROCEDURAL HISTORY

The Division's petitions were filed with the Commission on November 10, 1982. The petitions also sought the immediate placement of the respondents' names upon the exclusion list. On February 1, 1983, the Commission conducted a preliminary hearing and, on February 2, 1983, issued an order placing the names of both respondents upon the exclusion list pending final disposition of the petitions. By letter dated February 24, 1983, Mr. Leonetti requested a hearing. Also, by letter dated March 1, 1983, Mr. Merlino requested a hearing. On March 4, 1983, the Commission transmitted the matters to the Office of Administrative Law for determination as contested cases, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Following a hearing and on December 22, 1983, an initial decision was issued in which it was concluded that the Division had not established just cause for placement of the respondents' names upon the exclusion list. However, on May 1, 1984, the Commission, upon consideration of exceptions filed by the Division, ordered that the matter be remanded to the Office of Administrative Law for reconsideration of the record in accordance with rulings made by the Commission. On the same date, the matter was retransmitted to the Office of Administrative Law. The Commission issued its decision on May 25, 1984.

A prehearing conference was held on August 15, 1984. The matter was heard and the record closed on October 22, 1984. By an order of extension, the time period for submission of the initial decision was extended until January 31, 1985.

FINDINGS OF FACT

With regard to Mr. Merlino, the Division alleged: (1) that the respondent is a career criminal offender by reason of his purported association with Nicodemo Scarfo and Philip Leonetti, and his reputation within the law enforcement community of being a career criminal offender and an associate of career criminal offenders; (2) that the respondent is an associate of a career or professional offender for the reasons set forth previously; and (3) that the respondent's presence in a licensed casino establishment would be inimical to the interests of the state of New Jersey or licensed gaming therein also for the reasons set forth previously. With regard to Mr. Leonetti, the Division alleged: (1) that the respondent is a career criminal offender by reason of his purported association with Nicodemo Scarfo and his purported reputation among the law enforcement community of being a career criminal offender and an associate of career criminal offenders; and (2) that the respondent's presence in a licensed casino establishment would be inimical to the interest of the state or licensed gaming therein by reason of the factors previously cited.

(A) UNDISPUTED FACTS

The parties stipulated that all individuals whose names had been placed upon the exclusion list as of August 15, 1983, had a criminal record history which included at least one conviction for a criminal offense. The parties further stipulated that Messrs. Merlino and Leonetti had not been convicted of a criminal offense.

The Federal Bureau of Investigation defines organized crime as:

> Any group having some type of formalized structure whose primary objective is to obtain money through the use of violence or threat of violence, corrupt public officials, graft and extortion, and which has a significant adverse impact on the people in its locale or region or the country, as a whole. [P-4]

Mr. Leonetti knows Mr. Merlino and Nicodemo Scarfo (P-111 at 644). Mr. Leonetti is the nephew of Mr. Scarfo (P-111 at 625). Mr. Merlino knows Mr. Leonetti and Mr. Scarfo (P-111 at 647).

On July 3, 1972, Mr. Leonetti was arrested and was charged with a violation of N.J.S.A. 2A:151-62, possession of an offensive weapon (P-35). On January 13, 1972, he was found not guilty of a downgraded offense of N.J.S.A. 2A:170-3, carrying weapons or burglar tools with intent to break and enter or assault; presence in or near buildings or other places with intent to steal.

On March 25, 1975, Mr. Leonetti was arrested and was charged with atrocious assault and battery in regard to an alleged shooting. He was found guilty of an amended charge of a violation of N.J.S.A. 2A:170-27, fighting, a disorderly person's offense, and was fined $100 and $10 costs (P-35).

On December 30, 1977, a certificate of incorporation of Scarf, Inc., was filed with the New Jersey Secretary of State (P-86). Mr. Leonetti was the initial registered agent for the corporation as well as one of two directors and incorporators. The document does not contain the name of Mr. Scarfo, which indicates an absence of any interest therein.

On August 28, 1978, Mr. Leonetti was arrested and was later indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 2A:113-1 and 113-2, willfully, feloniously and with malice aforethought commit murder; N.J.S.A. 2A:151-5, N.J.S.A. 2A:113-1 and N.J.S.A. 2A:113-2, have in his possession a weapon, a pistol, and willfully, feloniously and with malice aforethought commit murder; and N.J.S.A. 2A:151-41(a), unlawfully have in possession a firearm, a pistol, without a permit, concerning an incident which occurred on July 3, 1977 (P-35 and P-78). On November 20, 1978, the indictment was dismissed (P-79).

On an unspecified date, Messrs. Merlino and Leonetti, together with Mr. Scarfo, were indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 2C:5-2, conspiracy to commit murder; N.J.S.A. 2C:11-3, knowingly and willfully commit murder; N.J.S.A. 2C:39-5(b), knowingly and unlawfully possess and carry a firearm, a handgun, without a permit; and N.J.S.A. 2C:39-4, knowingly and unlawfully possess a weapon, a handgun, with a purpose to use it unlawfully, concerning an incident which

purportedly occurred on December 16, 1979 (P-75). The respondents were acquitted of the charges following a trial before a jury.

On March 27, 1984, Michael J. Matthews, former mayor of the city of Atlantic City, and Frank Lentino were indicted by a Grand Jury in the United States District Court for the District of New Jersey (P-112). The defendants were charged with violations of 18 U.S.C. §1951 and §1952, extortion. Philip Leonetti together with Nicodemo Scarfo and Thomas Russo were named as unindicted co-conspirators. The essence of the charges is that an organized crime unit consisting of Messrs. Scarfo, Leonetti and others conspired with then Mayor Matthews to attain influence and control of the government of Atlantic City, by means of corruption, for the benefit and profit of the organized crime unit.

On September 18, 1984, Mr. Leonetti was indicted by a Grand Jury in the United States District Court for the District of New Jersey and was charged with violations of 18 U.S.C. §1951, three counts of extortion, and 18 U.S.C. §1952, two counts of conspiracy to commit extortion (P-115). More specifically, Mr. Leonetti was charged with acting as an agent of an organized crime unit headed by Nicodemo Scarfo, which conspired with then Mayor Matthews for the purpose of gaining influence and control over the government of Atlantic City, by means of corruption, for the benefit and profit of the organized crime unit, during the period from December 1981 to March 1984. This indictment has not been resolved to date.

Messrs. Merlino, Leonetti and Scarfo have been the subject of a great number of articles published in many newspapers, including, but not limited to, The Press of Atlantic City, the Courier Post of Camden, the Star-Ledger of Newark, the Philadelphia Daily News, the New York Times, the Bergen Record, the Trenton Times, the Wall Street Journal, the Bulletin of Philadelphia, the Philadelphia Daily News, and the Philadelphia Inquirer, which referred to them as the perpetrators of alleged criminal activities, as members of organized crime associations and as participants in related activities in the Philadelphia/South Jersey area (P-108, P-109 and P-110).

The Division also offered exhibits which established the criminal record histories of Ralph S. Natale (P-5), Angelo Bruno (P-7), Raymond Martorano (P-9), Philip Testa (P-10 and P-11), Frank Narducci (P-11 and P-13), Harry Riccobene (P-11, P-34, P-91

and P-93), Frank G. Sindone (P-14), Joseph Ciancaglini (P-11, P-15 and P-101), Anthony Ferrante (P-16 and P-17), Felix Bocchino (P-18 and P-19), Ralph A. Napoli (P-21 and P-22), Anthony Caponigro (P-23 and P-24), Pasquale Martorano (P-25), John Simone (P-26), John Stanfa (P-27, P-28 and P-29), Alfred Salerno (P-31), Frank J. Monte (P-32), Patricia Fanelli (P-33), Salvator Profaci (P-36), Frank Serpico (P-37), Louis Pacella (P-38), Lawrence Centore (P-39), Frank Materio (P-45 and P-47), Nicodemo Scarfo (P-68, P-69, P-70, P-71, P-72, P-73, P-74 and P-75), Robert Lumio (P-76), Saul Kane (P-80 and P-81), Nicholas Virgilio (P-32, P-83, P-84 and P-85), Joseph Bongiovanni (P-11 and P-95), Charles Warrington (P-11 and P-97), and Pasquale Spirito (P-11 and P-99). The Division also established that Messrs. Riccobene (P-92 and P-94), Virgilio (P-103), Bongiovanni (P-96), Warrington (P-98), Spirito (P-100) and Ciancaglini (P-102) are included on the exclusion list.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were whether Messrs. Merlino and Leonetti are career criminal offenders, Mr. Merlino by reason of his purported association with Messrs. Scarfo and/or Leonetti, and Mr. Leonetti by reason of his purported association with Mr. Scarfo, and whether the respondents had a reputation within the law enforcement community of being career or professional offenders and/or associates of career or professional offenders. In essence, the Division contended that the respondents were members of or associates of members of an organized crime cartel headed by Mr. Scarfo. Last, was whether the respondents had a reasonable apprehension of prosecution.

With regard to the alleged membership or association with members of an organized crime cartel, the Division offered no evidence of association with anyone other than Mr. Scarfo, except for pictures of the respondents attending a funeral also attended by persons reputed to be career or professional offenders (P-56 - P-62). The remainder of the evidence offered by the Division relevant to this issue consists of transcripts of testimony of persons, including a Federal Bureau of Investigation (FBI) agent, a State Commission of Investigations (SCI) agent, a Pennsylvania Crime Commission inspector and a fact witness, together with copies of reports promulgated by the Pennsylvania Crime Commission (P-104 - P-107).

In evaluating the evidence, it is essential to determine the reliability and believability, i.e., credibility of the persons whose testimonies were offered by the Division. With regard to the governmental witnesses, their testimonies were given in proceedings in other forums, some of which applied different evidential standards. References to Messrs. Merlino and Leonetti were in the nature of opinion and were based solely upon information provided by undisclosed informants, the reliability of whom was assessed and accepted only by the FBI. Each of the non-FBI witnesses relied solely upon the information provided by the FBI and did not verify independently the sources of this information. The respondents here had no opportunity to confront those witnesses at the time they testified. Although they were subject to cross-examination, the confrontation was not by persons with interests similar to the respondents herein. Nevertheless, the cross-examination raised serious questions concerning the reliability of the testimonies. In addition, the identification of the respondents is found only on the periphery of the testimonies, was stated in a purely conclusionary manner and was not pursued on cross-examination. Also, there is no criminal record history of convictions concerning the respondents to corroborate the conclusionary statements in the testimonies that the respondents have a relationship with Mr. Scarfo and others with regard to organized crime activities. This testimony, although emanating from several witnesses, basically involves information from a single source, the FBI, the basis of which is not disclosed. In order to accept this testimony at full value it is absolutely necessary to evaluate the credibility of the witnesses, the opportunity for which was precluded since they were not called as witnesses in this proceeding. Absent the ability to make a finding of fact on credibility and absent undisputed and objective corroborating evidence regarding these respondents, the testimonies of the governmental witnesses rise only to the level of a written report issued by a governmental agency. Further, aside from the FBI, the authority and powers of the other governmental agencies were not set forth. Therefore, this testimonial evidence is of minimal value and weight. Alone, this evidence, although of great volume, is of insufficient quality to support a finding of fact with regard to the allegations concerning the respondents.

The Division also offered reports on organized crime issued by the Pennsylvania Crime Commission for the years 1980 through 1983 (P-104 - P-107). Although the nature and duties of the Pennsylvania Crime Commission were not revealed, it is apparent that it is a governmental agency. The reports did not reveal with specificity the source of the information contained therein other than stating generally that the Pennsylvania Crime Commission relied upon law enforcement agencies and court

records. Further, the reports concede that there is an absence of a factual basis for much of their contents. In addition, the reports contain commentary and are replete with speculation. Again, any mention of the respondents is on the periphery of the reports and is stated purely in a conclusionary manner. Essentially, the information contained in the Pennsylvania Crime Commission reports is merely a repetition of the testimonial evidence offered by the Division. Therefore, the reports are of a minimal evidential value and weight and are insufficient to support a finding of fact with regard to the allegations made against the respondents.

The Division also offered the testimony of Joseph Salerno given before the Commission during proceedings concerning Local 54 (P-11, day 7). Mr. Salerno was the only person to testify who claimed that he had personal knowledge of the allegations regarding the respondents herein. Nevertheless, on the only occasion when there was an opportunity for these respondents to cross-examine the witness, a jury rejected his testimony. Also, his testimony was highly suspect by reason of negative motives he harboured regarding the respondents, and because it was inconsistent, vague and unsubstantiated. In addition, his testimony was not otherwise corroborated by evidence from the Division. Therefore, this testimony is not worthy of belief.

The Division also contended that negative inferences could be drawn by reason of the respondents' assertion of their right to silence under the Fifth Amendment during both the Local 54 hearing and the subject hearing, which inferences could arguably help suport findings of fact in favor of the Division (P-111).

In its decision in In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti from Casino Hotel Facilities, OAL DKT. CCC 1807-83 and OAL DKT. CCC 1809-83 (consolidated) (December 22, 1983), reversed and remanded, Casino Control Commission, (May 25, 1984), the Commission at 44 rejected the conclusion in the initial decision that no negative inferences could be drawn from the respondents' invocation of their Fifth Amendment right to silence. Nevertheless, the conclusions reached in both the initial decision and the final decision are basically compatible.

It is well-established that the Fifth Amendment privilege against self-incrimination applies in civil proceedings where the answers to questions posed might tend to subject the witness to criminal prosecution. McCarthy v. Arndstein, 266 U.S. 34, 40, 45, (1925). Also, the Fifth Amendment privilege is applicable, through the due process

clause of the Fourteenth Amendment, to any state proceeding. Malloy v. Hogan, 378 U.S. 1 (1964). The privilege not to testify is applicable to all proceedings in all courts in this State, pursuant to New Jersey Rules of Evidence, Evid. R. 39. In addition, the privilege is mandatorily applicable in all administrative agency hearings, pursuant to N.J.S.A. 52:14B-10a. N.J.A.C. 1:1-15.6, incorporates Evid. R. 39, with respect to the privilege against self-incrimination. In pertinent part, this rule provides:

> The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: . . . Rule 39 (Reference to Exercise of Privileges) . . .

Evid. R. 39 provides that no adverse inference may be drawn from the exercise of the privilege, providing, pursuant to Evid. R. 24, that there is a reasonable apprehension of prosecution.

In Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527 (App. Div. 1967), the Appellate Division held that an adverse inference from a defendant's failure to take the stand in a civil fraud action did not violate the privilege when the only potential harm was nothing more than a monetary judgment. Id. at 533. The court also concluded that there was legal and competent evidence that the silent party knowingly participated in the fraud, including an out-of-court admission against interest, which had been admitted into evidence. The defendant failed to testify and refute the substantial evidence against him with facts within his knowledge. This case can be distinguished from the subject action, because the respondents herein have a reasonable apprehension of prosecution and because the Division did not produce sufficient credible evidence of its allegations.

In Mahne v. Mahne, 66 N.J. 53 (1974), the State Supreme Court held that a defendant/cross-complainant in a divorce action in which adultery, a misdemeanor, was alleged, was properly entitled to claim the privilege in refusing to answer interrogatories concerning the allegations. Nevertheless, the Court held that a refusal by the defendant to submit to pretrial discovery based upon the exercise of the privilege could lead to the imposition of noncriminal sanctions and could, ultimately, permit the trial court to draw an adverse inference. However, the Court held that entry of an order striking the defendant's pleadings was too severe. This case is also clearly distinguishable from the

subject action because the respondents invoked the privilege during the course of the hearing while they had a reasonable apprehension of prosecution and because they had no counter claim pending against the Division.

Baxter v. Palmigiano, 425 U.S. 308 (1975) has also been cited. This case involves an action for declaratory and injunctive relief. It was alleged that prison disciplinary proceedings against the respondent violated his equal protection and due process rights because, in part, the disciplinary board permitted an adverse inference to be drawn from the respondent's silence at the hearing. The Court held that it was proper to draw an inference from the inmate's silence because of the civil nature of the proceeding and because no criminal proceedings were pending against the inmate; in addition, the inmate was not asked to waive his privilege. Id. at 317. Also, the respondent's silence was not the sole basis for the judgment entered against him. At the same time, the Court noted that if inmates in prison disciplinary proceedings were compelled to give testimony that might incriminate them in later criminal proceedings, they must be offered whatever immunity is required to supplant the privilege. Id. at 316. The removal of the potential for future prosecution in exchange for the option of testifying or facing a drawing of an adverse inference from silence constitutes a totally different scenario from that present in the subject action.

Also cited was Bastas v. Board of Review Department of Labor and Industry, 155 N.J. Super. 312 (App. Div. 1978), wherein an alien appealed from a decision of the Department of Labor and Industry Board of Review denying her unemployment compensation. The agency had denied the claim for benefits by reason of her failure to demonstrate that she was available for work. The Appellate Division upheld the agency's decision, finding that an adverse inference that she was not authorized to work in this country could be drawn from her refusal to testify about her status. The court found that drawing such an inference could not offend the appellant's Fifth Amendment privilege, because the proceedings were civil and because she had the burden of proof to establish her country of origin, citizenship, etc. Id. at 315. This case is distinguishable since the respondents in the subject action had no burden of proof.

The Commission in its final decision at 36 also cited Reilly v. Gillen, 176 N.J. Super. 321 (App. Div. 1980) in support of the proposition that an adverse inference may be drawn from a witnesses' silence where it would not destroy the privilege. This case

involved an action for libel in which a husband and wife were codefendants and allegedly republished a 23-year-old newspaper article, which was factually incorrect and which falsely stated that the plaintiff was dishonest and unpatriotic. With regard to the issue of "actual malice," the court concluded that there was sufficient credible evidence in the record for the finding that the husband "knew" of the untrue and defamatory character of the article. However, there was no direct evidence that the wife had knowledge of the nature of the article. The findings of the wife's knowledge could have been reached only by the drawing of an adverse inference that the husband had provided the information to the wife. Nevertheless, the defendant had exercised the marital privilege, pursuant to Evid. R. 28. Accordingly, the court did not permit the drawing of such an adverse inference. This case serves to emphasize two key points: first, the privilege was raised by a defendant who carried no burden of proof, and second, the Appellate Division noted that there was no direct evidence in the record of the ultimate fact which needed to be found. This case is similar to the matter herein, in that Messrs. Merlino and Leonetti were also respondents with no burden of proof, and the Division's proofs, absent the drawing of an adverse inference, did not satisfy its burden.

At this point, it is necessary to discuss the circumstances under which Messrs. Merlino and Leonetti asserted their Fifth Amendment privilege to silence. At both the Local 54 hearing and the hearing herein, the respondents were called by the Division, which was the petitioner. They asserted the privilege in response to certain questions concerning their knowledge and business relationship, if any, with various persons, including Mr. Scarfo, who are purportedly involved in organized crime activities, and their involvement, if any, in the incident described by Mr. Salerno. Given the notoriety which can be attributed to the respondents from newspaper articles offered by the Division and from statements of law enforcement officials regarding the respondents contained in the articles (P-109 and P-110), from the conclusions stated by representatives of various governmental agencies, the nature of the subject proceeding and the fact that the Division is a part of the Office of the Attorney General, there can be no doubt that the respondents have a reasonable apprehension of prosecution. This apprehension is enhanced for Mr. Leonetti by reason of his recent indictment (P-115). Therefore, no adverse inferences can be drawn from the respondents' invocation of their Fifth Amendment right to silence. It is also important to note that the respondents are faced here with very serious allegations made by the Division, the consequences of which are equally serious. Given the low quality of evidence offered by the Division, there is additional reason for the respondents not to testify.

There was sufficient evidence to establish that the respondents know each other and know Mr. Scarfo, and have been observed in the presence of each other and Mr. Scarfo, particularly Mr. Leonetti. However, the Division offered no reliable evidence of the nature of the relationship between the respondents and between the respondents and Mr. Scarfo. However, and solely for the purposes of this proceeding, and based primarily upon the transcript of a conversation between Messrs. Riccobene, Testa, Narducci and Scarfo (P40), the transcript of a conversation between Messrs. Scarfo and Testa (P-46), and the criminal record histories of various individuals which corroborate portions of the testimonies of governmental witnesses, I am persuaded that Mr. Scarfo is a member of an organized crime cartel. Nevertheless, the Division offered no evidence to establish that the observation of Messrs. Leonetti and Merlino in the presence of Mr. Scarfo was related in any respect to Mr. Scarfo's purported criminal misconduct.

With regard to the alleged reputation of the respondents within the law enforcement community, the Division offered the transcript of the testimony of an FBI agent. Although clearly the respondents may have the contended reputation within the FBI, there was no evidence offered as to their reputation among the remainder of the relevant law enforcement community. Their reputation with the FBI is not sufficient to cover the relevant law enforcement community as a whole. Although witnesses from the Pennsylvania Crime Commission and the State Commission of Investigations were offered, those agencies are not members of the law enforcement community.

After consideration of the entire record in this matter, I further FIND that:

1. The Division's evidence consisted primarily of transcripts of testimonial evidence given by representatives of various law enforcement and other governmental agencies in other proceedings.

2. The testimonies consisted substantially of opinions of the witnesses and of their employing agencies.

3. The opinions were based solely upon information derived from undisclosed informants, whose reliability was assessed and was accepted only by the FBI.

4. Each of the non-FBI governmental witnesses relied upon information supplied by the FBI.

5. The cross-examination of the witnesses raised serious questions concerning the reliability of the testimony.

6. These respondents had no opportunity to cross-examine the witnesses.

7. The cross-examination of the witnesses was made by persons who did not have interests or concerns similar to those of the respondents herein.

8. The references in the testimonies to the respondents were peripheral to the primary purpose of the testimonies and were stated solely in a conclusionary form.

9. Any evaluation of these testimonies requires consideration of the credibility of the makers thereof, which opportunity did not exist.

10. Accordingly, the testimonies rise only to the level of a written report issued by a governmental agency.

11. These testimonies are of minimal evidential value and weight and are not sufficient, independently, of supporting a finding of fact with regard to the respondents.

12. The Pennsylvania Crime Commission reports appear to be based solely upon information provided by other governmental agencies, including some law enforcement authorities, together with court records.

13. The Pennsylvania Crime Commission reports are replete with commentary and speculation, and admittedly reveal an absence of a factual basis for much of their contents.

14. These reports mention the respondents only peripherally and in a conclusionary manner.

15. These testimonies and reports were not corroborated by competent evidence.

16. The reports are of a minimal evidential value and are insufficient to support a finding of fact with regard to the respondents.

17. On the only occasion when the testimony of Mr. Salerno was subject to cross-examination by the respondents it was rejected by a jury.

18. Mr. Salerno's testimony was subject to improper motivation concerning the respondents, was inconsistent, vague and was unsubstantiated by any other reliable evidence; therefore, it was not believable.

19. In newspaper articles and written reports, the respondents have been identified and targeted by representatives of law enforcement and other governmental agencies.

20. The Division, which is the petitioner herein, is a part of the Office of the Attorney General, the primary law enforcement agency of the State of New Jersey.

21. Based upon the foregoing and the fact that Mr. Leonetti has been indicted subsequent to the bringing of these charges, the respondents have a reasonable apprehension of prosecution.

22. Based upon the Division's production of evidence which was corroborated by the testimonies of governmental witnesses, Mr. Scarfo appears to be a member of an organized crime cartel.

23. Mr. Leonetti has been observed on several occasions in the presence of Mr. Scarfo.

24. Mr. Merlino has on occasion been observed in the presence of Mr. Scarfo.

25. Messrs. Merlino and Leonetti have been observed in the presence of each other.

26. The Division offered no evidence to establish the nature of the relationship between the respondents or either of them with Mr. Scarfo, let alone that the relationship was nefarious.

27. The respondents have a reputation within the FBI as being career criminal offenders and associates of career or professional offenders.

28. The Division offered insufficient evidence to establish the reputation of the respondents within the law enforcement community.

DISCUSSION OF LAW AND CONCLUSIONS

Section 71 of the Act mandates that the Commission provide by regulation for the institution of a list of persons who are to be excluded from any licensed casino establishment. This section also sets forth certain classifications of persons, based upon their criminal activities or unsavory public image, who should be considered for possible exclusion. The Commission promulgated a series of regulations which were designed to implement the statute. N.J.S.A. 19:48-1.1 et seq. In pertinent part, N.J.A.C. 19:48-1.3, criteria for exclusion, provides:

> (a) The exclusion list may include any person:
>
> 1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
>
> 2. Who is an associate of a career or professional offender and whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
>
> ....
>
> 4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

When, as in this matter, the Division proposes to have a person's name placed on the exclusion list, the Division has the burden of establishing, by the preponderance of the credible evidence, the reasons for such placement. The Division alleged that the names of the respondents should be included on the exclusion list, pursuant to N.J.A.C. 19:48-1.3(a)1, 2 and 4.

A career or professional offender is defined in N.J.A.C. 19:48-1.1 as follows:

> Any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state.

Further, "occupational manner or context," as referred to at N.J.A.C. 19:48-1.1, means "the systematic planning, administration, management or execution of an activity for financial gain." Although the parties dispute what proofs are required to satisfy the regulations, it is abundantly evident that, regardless of whether there is a conviction for such misconduct, there must be sufficient credible evidence of the commission of more than one unlawful act which establishes that a person relies upon his misconduct as a means of self support.

The Division offered no evidence that the respondents are involved currently in any criminal misconduct, let alone in an "occupational manner or context." In addition, the fact that the respondents asserted their right to silence in response to questions concerning their means of earning a living does not establish that they support themselves from criminal activities. Further, the combination of several types of unreliable evidence, even when combined with the assertion of the right to silence, does not rise to the level of competent, reliable and believable evidence. The Division's case consists of nothing more than unsubstantiated accusations made by nameless, faceless and otherwise unknown persons, who, by virtue of their purported role in organized crime activities, are inherently subject to disbelief.

I **CONCLUDE** that the Division failed to establish, by the preponderance of the credible evidence, that the respondents are career criminal offenders, pursuant to N.J.A.C. 19:48-1.3(a)1.

The Division also alleged that Mr. Leonetti was an associate of Mr. Scarfo, and that Mr. Merlino was an associate of Messrs. Scarfo and Leonetti. Further, Mr. Scarfo

was alleged to be a career or professional offender. Webster's New Collegiate Dictionary (7 ed. 1979) at 67 and in pertinent part, defines "associate" as "1. to join as a partner, friend, or companion; 2. . . . to keep company with attend." Clearly, the Division contended that the alleged associations were related to Mr. Scarfo's purported criminal misconduct.

The Division's proofs regarding Mr. Leonetti, who is a nephew of Mr. Scarfo, consisted of observations of the respondent in Mr. Scarfo's presence. Further, Mr. Merlino was observed in the presence of Messrs. Scarfo and Leonetti on occasions. Although for the limited purpose of this hearing I am persuaded that Mr. Scarfo is a career criminal offender, the Division offered no evidence of the nature of the relationship, if any, which emanated from the occasions when the respondents were observed in the presence of Mr. Scarfo or in the presence of each other. Given the familial relationship between Messrs. Scarfo and Leonetti, it is natural that they may be observed together on occasion. Simply, the Division has not established the alleged associations, nor has it established that the relationship between these persons is nefarious in any regard.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondents are associates of Nicodemo Scarfo, or that they are associates each with the other, pursuant to N.J.A.C. 19:48-1.3(a)2.

The inimicality of the presence of a person in a licensed casino establishment is defined in N.J.A.C. 19:48-1.1 as:

> "Inimical to the interest of the State of New New Jersey or of licensed gaming" means adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act.

In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether a person's conduct is inimical to the policies of the Act. Although this opinion dealt with licensing criterion, it is properly applicable in exclusion list cases. The Commission states at 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate what participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereto, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

Legalized casino gaming in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to a most pervasive and stringent regulation. In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325, 328, app. dism., 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), aff'd as modified, 90 N.J. 361, app. dism., 103 S. Ct. 562 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate at 381:

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations," N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision. . .is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal

> backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)(7).

Further, it has been recognized that one of the primary goals of the Act was "to guard against any danger of infiltration by organized crime." In re Boardwalk Regency Casino License Application, 180 N.J. Super. at 340.

The Division did not present any proofs of the "public confidence and trust," concerning the gaming industry in New Jersey, let alone with regard to the respondents. However, it must be determined whether the public would be reasonably justified, based upon the totality of the information presented herein, in perceiving that casino gaming operations and the strict regulation thereof would be threatened by the presence of the respondents in a licensed casino hotel. Given the fact that the respondents would be patrons as opposed to being licensed employees, the standard of inimicality is less restrictive.

With regard to Mr. Merlino, the Division contended that his presence in a licensed casino establishment would be inimical by reason of his association with Messrs. Scarfo and Leonetti, his reputation within the law enforcement community, and because he is a career criminal offender. The Division's inability to prove these allegations automatically defeats the allegation of inimicality.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that Mr. Merlino's presence in a licensed casino establishment would be inimical to the interest of the state or of licensed gaming therein, pursuant to N.J.A.C. 19:48-1.3(a)4.

Similarly with regard to Mr. Leonetti, the Division has failed to establish that he is a career criminal offender, that he is an associate of Nicodemo Scarfo and his reputation within the law enforcement community. However, Mr. Leonetti is a named defendant in a recent indictment, which must be addressed separately with regard to the inimical issue.

The indictment charges Mr. Leonetti with being a leading associate in an organized crime cartel and with being responsible for the efforts of that cartel to control and influence the government of Atlantic City, by means of corruption, for the profit o

the cartel (P-115). Although the presumption of innocence attaches to Mr. Leonetti, the nature of the charges must be weighed with regard to the issue of inimicality. More specifically, the respondent is charged with an attempt to buy and control the mayor's office of the city of Atlantic City, the only municipality in this state in which casino gambling is permitted. If these charges are true, the inimicality of the respondent's presence in a casino hotel is established beyond all doubt. Although currently there is nothing more than charges, the nature of the charges is so heinous and is so directly related to the public confidence and trust in the regulation of the casino industry in this state that the mere existence of the charges is sufficient to warrant exclusion pending the outcome of the criminal proceedings. More specifically, if the respondent is found guilty of the charges, he should be permanently excluded. On the contrary, if he is acquitted, there is no cause for exclusion.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that Mr. Leonetti's presence in a licensed casino establishment would be inimical to the interests of the state and licensed gaming therein by reason of his indictment filed in the United States District Court for the District of New Jersey on September 18, 1984, pursuant to N.J.A.C. 19:48-1.3(a)4.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement to include the name of Lawrence Merlino upon the Casino Control Commission's list of persons who are to be excluded or ejected from any licensed casino hotel be **DENIED.** It is further **ORDERED** that the Division's petition to include the name of Philip Leonetti upon the exclusion list be **GRANTED** pending the outcome of the indictment (P-115).

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 31, 1985
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

January 31 1985
DATE

Mary Ann Doczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

bc

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

P-1 The United States of America v. Nicodemo Scarfo, United States District Court, District of New Jersey, Indictment Number 81-10, Transcript of Sentence Hearing, Volume I, June 25, 1981 (107 pages); Transcript of Sentence Hearing, July 7, 1981 (108 pages)

P-2 Telephone List (5 pages)

P-3 Telephone List (2 pages)

P-4 Federal Bureau of Investigation definition of organized crime

P-5 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Ralph S. Natale, June 28, 1979 (2 pages)

P-6 Federal Bureau of Investigation—Form 302—Surveillance Report, Joseph Salerno, February 22, 1980 (4 pages)

P-7 Federal Bureau of Investigation—Criminal Record Sheet of Angelo Bruno (3 pages)

P-8 Telephone List (7 pages)

P-9 Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Raymond Martorano, June 29, 1979 (2 pages)

P-10 United States Department of Justice, Federal Bureau of Investigation—Identification Division, Criminal Record Sheet, Philip Charles Testa, March 30, 1981 (4 pages)

P-11 The United States of America v. Phillip Testa, Frank Narducci, Carl Ippolito, Harry Riccobene, Joseph Ciancaglini, Mario Riccobene, Charles Warrington, Pasquale Spirito, Joseph Bongiovanni, Frank Primerano, United States District Court, Eastern District of Pennsylvania, Indictment (29 pages)

P-12 The United States of America v. Frank Narducci, Anthony Charles Rossano, United States District Court for the Eastern District of Pennsylvania, Indictment, filed July 14, 1980 (10 pages)

P-13 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Frank Narducci, October 12, 1978 (4 pages)

P-14 United States Justice Department, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Frank G. Sindone, July 26, 1979 (6 pages)

P-15 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Joseph Ciancaglini, June 1, 1981 and June 19, 1979 (3 pages)

P-16 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Anthony Ferrante, June 19, 1979

P-17 United States Department of Justice, Federal Bureau of Investigation, Identification Division—File Review of Anthony Vito Ferrante

P-18 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Felix Bocchino, June 7, 1979 (2 pages)

P-19 United States Department of Justice, Federal Bureau of Investigation, Identification Division—File Review of Felix Bocchino

P-20 United States Department of Justice, Federal Bureau of Investigation—Form 302—Surveillance Report, March 25, 1980 (5 pages)

P-21 United States Department of Justice, Federal Bureau of Investigation—Criminal Record Sheet, Ralph A. Napoli, June 25, 1979

P-22 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau, File Review of Ralph Napoli

P-23 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Anthony Capanegro (3 pages)

P-24 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—File Review of Antonio Rocco Caponigro

P-25 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Pasquale Martarano, June 26, 1979

P-26 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, John Simone, December 12, 1980 (3 pages)

P-27 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, John Stanfa, September 24, 1980

P-28 The United States of America v. John Stanfa, United States District Court for the Eastern District of Pennsylvania, Criminal number 80-00156, Indictment, filed May 14, 1980 (5 pages)

P-29 United States Department of Justice, Federal Bureau of Investigation—Form 302—Surveillance Report, March 31, 1980 (3 pages)

P-30 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Form 302—Surveillance Report, March 31, 1980 (3 pages)

P-31 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Alfred Salerno (5 pages)

P-32 The City of Philadelphia, Police Department—Extract of Criminal Record, Frank J. Monte (2 pages)

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P-33 City of Philadelphia, Police Department—Extract of Criminal Record, Patricia Fanelli

P-34 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Harry Riccobene, June 23, 1980 (4 pages)

P-35 United States Department of Justice, Federal Bureau of Investigation, Identification Bureau—Criminal Record Sheet, Philip Leonetti, July 2, 1980; and State of New Jersey, Division of State Police, State Bureau of Identification—Criminal History Summary Record, Philip Leonetti, April 26, 1975 (2 pages)

P-36 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Salvatore Profaci, June 24, 1981

P-37 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Frank Serpico, June 24, 1981 (3 pages)

P-38 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Louis Pacella, June 24, 1981 (2 pages)

P-39 United States Department of Justice, Federal Bureau of Investigation, Identification Division—Criminal Record Sheet, Lawrence Centore, June 24, 1981 (2 pages)

P-40 Transcription of a tape recording of telephone conversation between Harry Riccobene, Philip Testa, Frank Narducci and Nicodemo Scarfo, November 4, 1977 (72 pages)

P-41 The State of New Jersey v. Robert Lumio, Transcription of recorded statement of Robert Lumio contained in the Record of Proceedings (9 pages)

P-42 Handwriting on Paper

P-44 Picture of premises at 26-28 North Georgia Avenue, Atlantic City, New Jersey

P-45 Picture of Frank Materio

P-46 Transcription of recorded telephone conversation between Nicodemo Scarfo, Philip Testa and unknown person, April 20, 1976 (7 pages)

P-47 The United States of America v. Frank Materio, United States District Court, District of New Jersey, Criminal No. 270-65, Indictment and Judgment of Conviction (4 pages)

P-48 The State of New Jersey v. Frank Lentino, statement of Frank Lentino contained in the record of proceedings (9 pages)

P-49 Letter to Jeffrey S. Blitz, Assistant Atalntic Atlantic County Prosecutor, from Robert I. Segal, Esq., September 29, 1978 (4 pages)

P-50 The State of New Jersey v. Nicodemo Scarfo, Philip Leonetti and Lawrence Merlino, Superior Court of New Jersey, Law Division - Criminal, Order, January 16, 1980 (3 pages)

P-51 Statement for the savings account for the period from October 1 to December 31, 1979, Frank Gerace, Guarantee Bank

P-52 Credit Memo to the checking account of Frank Gerace at the Guarantee Bank, December 28, 1979 (2 pages)

P-53 Statement of the checking account of Frank Gerace at the Guarantee Bank, January 21, 1980

P-54 Check, dated December 28, 1979, payable to Lillian Gerace from the account of Frank Gerace, in the amount of $10,000, drawn on the Guarantee Bank (2 pages)

P-55 Treasurer's check No. 073832, payable to Catherine Scarfo, December 28, 1979, in the amount of $10,000, from Lillian Gerace (2 pages)

P-56 Photograph of the funeral of Saul Kane's mother

P-57 Photograph of the funeral of Saul Kane's mother

P-58 Photograph of the funeral of Saul Kane's mother

P-59 Photograph of the funeral of Saul Kane's mother

P-60 Photograph of the funeral of Saul Kane's mother

P-61 Photograph of the funeral of Saul Kane's mother

P-62 Photograph of the funeral of Saul Kane's mother

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P-99 The United States of America v. Pasquale Spirito, United States District Court for the Eastern District of Pennsylvania, Docket Number CR. 81-0049-08, Judgment and Probation/Commitment Order, June 25, 1982

P-100 In the Matter of the Exclusion of Pasquale Spirito from Casino Hotel Facilities, State of New Jersey, Casino Control Comission, Docket Number 82-EL-18, Preliminary Order of Exclusion, January 31, 1983

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 82-EL-19 & 20 (Consolidated)

IN THE MATTER OF THE EXCLUSION OF :

LAWRENCE MERLINO AND PHILIP LEONETTI : COMMISSION DECISION

FROM CASINO HOTEL FACILITIES :

BEFORE:

Walter N. Read, Chairman
E. Kenneth Burdge, Vice-Chairman
Valerie H. Armstrong, Commissioner
Carl Zeitz, Commissioner
Joel Jacobson, Commissioner

APPEARANCES:

For the Division of Gaming Enforcement:

William E. Mountford, Jr., Deputy Attorney General

For Philip Leonetti:

Edwin J. Jacobs, Jr., Esq.

For Lawrence Merlino:

Michael L. Testa, Esq.

For the Casino Control Commission:

Robert J. Genatt, General Counsel
Dennis Daly, Senior Assistant Counsel
Carole R. Jacobson, Assistant Counsel

INTRODUCTION

These matters concern the petitions filed by the Division of Gaming Enforcement (Division) seeking the exclusion of Philip Leonetti and Lawrence Merlino from the

premises of casino hotels pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19.48-1.1 et seq. Following our earlier order of remand, the Administrative Law Judge (ALJ) issued his second initial decision finding that the Division failed to prove any basis for the exclusion of Mr. Merlino, but recommending approval of the petition to include the name of Mr. Leonetti upon the list until the outcome of a pending indictment. For the reasons hereafter stated, we find that, although Mr. Leonetti could be excluded solely by reason of his pending indictment, the Division has adequately presented additional grounds for his exclusion. As to Mr. Merlino, we reverse and find the Division has proved its case for his exclusion as well based upon his recent indictment and upon his involvement with organized crime.

PROCEDURAL HISTORY AND FACTS

On November 10, 1982, the Division filed petitions with the Commission to place respondents Lawrence Merlino and Philip Leonetti on the exclusion list. N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq. On January 25, 1983, the Commission conducted a preliminary hearing, and, on February 2, 1983, issued an order placing the names of both respondents upon the exclusion list pending final disposition of the petitions. N.J.A.C. 19:48-1.5; N.J.A.C. 19:42-4.4, -4.5. On March 4, 1983, the matters were transmitted to the

Office of Administrative Law (OAL) for determination as contested cases pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Following separate prehearing conferences, the matters were consolidated and a plenary hearing was conducted before the ALJ on May 19, 20 and August 15, 1983. On December 22, 1983, the ALJ filed an initial decision recommending denial of the petitions. After consideration of the entire record, we reversed and remanded the matter for further proceedings. On May 1, 1984, the matters were retransmitted to the OAL.[1] On May 25, 1984, we issued an opinion explaining our reasons for the remand. See In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti from Casino Hotel Facilities, Dkt. Nos. 82-EL-19 and 20 (May 25, 1984) (hereafter Merlino and

1. On remand, the parties were free to adduce additional testimony or other evidence. However, the only additional evidence admitted was the then recent indictment against Leonetti and a related indictment against former Atlantic City Mayor Michael Matthews, as well as our decision in In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, Docket No. 81-LO-1 (Commission decision Sept. 28, 1981) (hereafter Local 54). In Local 54, we conducted hearings to determine whether certain union officials were disqualified under Section 86 of the Casino Control Act. The Commission found that the Local's President and its Business Manager were disqualified under section 86(f) by reason of their association with certain career offenders or career offender cartel members. Another official was disqualified under section 86(c) by reason of a prior criminal conviction.

Leonetti). Following a prehearing conference, a hearing was held before the ALJ on October 22, 1984.

On January 31, 1985, the ALJ filed his second initial decision[2] recommending denial of the petition to include the name of Lawrence Merlino upon the exclusion list, but approving the petition to include the name of Philip Leonetti upon the list pending resolution of the indictment filed against him on September 18, 1984, in the United States District Court of New Jersey.[3]

More specifically, the ALJ found that the Division failed to prove by a preponderance of the evidence that: Messrs. Merlino and Leonetti are career criminal offenders as defined in N.J.A.C. 19:48-1.1; or that they are associated with career offenders in such manner as to make their presence in a casino hotel inimical to legitimate gaming; or that Mr. Merlino's presence in a licensed casino establishment would otherwise be inimical to the interest of the State or of licensed gaming therein pursuant to N.J.S.A.

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2. A copy of the same is appended hereto at A-1 to 29 for convenient reference.
3. The indictment charges Mr. Leonetti with two counts of extortion and one count of conspiracy to commit extortion contrary to 18 U.S.C. 1951 and 1952 in connection with certain alleged transactions with the former mayor of Atlantic City, Michael J. Matthews, who was himself convicted of charges emanating from those alleged transactions.

71(a) and N.J.A.C. 19:48-1.3(a)(1), (2) and (4). The ALJ also concluded that, solely by reason of the pending indictment against him, Mr. Leonetti's presence would be inimical and he should be excluded pending the outcome of the criminal proceeding. The ALJ further held that, if Mr. Leonetti were found guilty of the charges, he should be permanently excluded, but if acquitted, there would be no cause for exclusion. The ALJ attached minimal evidential value and weight to the hearsay evidence introduced by the Division, and refused to draw any adverse inference from the respondents' failure to respond to the evidence against them.

Counsel for respondent Leonetti and the Division filed exceptions and letter briefs. Oral argument before the Commission was heard on July 24, 1985. Counsel for respondent Merlino argued the validity of each of the ALJ's rulings. Counsel for respondent Leonetti excepted to that portion of the initial decision which orders the exclusion of Mr. Leonetti based upon the pending indictment, contending that the indictment provides no basis for a finding of inimicality because of the presumption of innocence and because the Casino Control Act does not provide for excluding a patron based on a pending indictment. Further, he argued that the evidentiary standards contained in section 107(a)(6) of the Act and the residuum rule embodied in N.J.A.C.

1:1-15.8 are compatible, drawing a distinction between what he termed "intermediate findings" (to which 107(a)(6) would apply) and "ultimate findings" (to which the residuum rule must apply). At our public meeting of August 15, 1985, we substantially modified the initial decision for the reasons set forth in the record and amplified here.

Upon review and consideration of the initial decision in this case, the entire record of the proceedings, the written exceptions filed by both parties and the oral arguments of the parties, we find ourselves in substantial disagreement with the ALJ. First, we believe that the ALJ erred on evidential standard and Fifth Amendment issues. Second, we believe that the ALJ unduly minimized the value of the evidence presented by the Division. As to the merits, we agree that respondent Leonetti could be excluded pursuant to N.J.A.C. 19:48-1.3(a)(4) by reason of his pending indictment. However, we believe that the ALJ erred in finding that, if Mr. Leonetti is subsequently acquitted on the subject charges, "there is no cause for exclusion" (A-20). Moreover, we disagree with the ALJ's finding that the Division failed otherwise to prove that respondent Leonetti should be excluded from a casino hotel pursuant to N.J.A.C. 19:48-1.3 et seq. As to Mr. Merlino, we disagree with the ALJ's finding that the Division failed to prove its case for

exclusion. Finally, we find that an indictment handed up against Mr. Merlino subsequent to the issuance of the second initial decision provides yet another basis for his exclusion.

Mr. Leonetti's record of involvement with the criminal justice system can be summarized as follows:

1. On January 3, 1972, respondent Leonetti was arrested and charged with a violation of N.J.S.A. 2A:151-62, possession of an offensive weapon (P-35).[4] On January 13, 1972, he was found not guilty of a downgraded offense of carrying weapons or burglar tools with intent to break and enter or assault; presence in or near buildings or other places with intent to steal, contrary to N.J.S.A. 2A:170-3;

2. On March 25, 1975, respondent Leonetti was arrested and charged with atrocious assault and battery in regard to an alleged shooting. He was found guilty of an amended charge of a violation of N.J.S.A. 2A:-170-27, fighting (a disorderly persons offense), and was fined $100 and $10 costs (P-35);

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4. The initial decision mistakenly recites the date of this event as July 3, 1972 (A-4). In all other respects, the factual recitations in the initial decision are accurate and are incorporated by reference. "P" refers to the Division's exhibits. "1T" and "2T" refer respectively to the 1983 and 1985 transcripts of testimony before the ALJ. "Rb" refers to the respondent's brief. "Db" refers to the Division's brief.

3. On August 28, 1978, respondent Leonetti was arrested and later indicted by an Atlantic County Grand Jury for alleged violations of N.J.S.A. 2A:113-1 and 113-2, willfully, feloniously and with malice aforethought committing murder; and N.J.S.A. 2A:151-41(a), unlawfully having in his possession a firearm, a pistol, without a permit (P-35 and P-78).[5] On November 20, 1978, the indictment was dismissed (P-79).

4. On December 23, 1979, respondent Leonetti, together with respondent Merlino and Nicodemo Scarfo, were arrested and later indicted by an Atlantic County Grand Jury

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5. The subject indictment concerned the "gangland style" murder of an individual named Guisippi (Pepe) Leva, which occurred outside Price's Pit, an Atlantic County landfill, in the summer of 1977. (On October 3, 1980, the New York Times reported that on June 26, 1977, a tailor named Leva got into a fight with Mr. Leonetti outside the Flamingo Motel in Atlantic City apparently over a loanshark debt (P-109)). Earl Wayne DeVault, the only known witness, identified Philip Leonetti as the murderer. Leonetti was subsequently indicted for the murder. DeVault later recanted this identification which exculpated Leonetti as Leva's murderer. DeVault's recantation was arranged by Harold L. Garber, an attorney-at-law, who then represented DeVault. Mr. Garber delivered the crucial taped recantation of DeVault to Scarfo rather than to Leonetti's counsel, the Atlantic City Prosecutor or the judge assigned to the case. While representing DeVault, Mr. Garber continued in a professional relationship with Mr. Leonetti, whom he had served as counsel on two separate occasions prior to his August 1978 meeting with DeVault and whom he represented again on February 6, 1979, prior to DeVault's second grand jury appearance. On March 28, 1984, the New Jersey Supreme Court castigated Mr. Garber for this serious conflict of interest and suspended his license to practice law for one year. See In the Matter of Harold I. Garber, 95 N.J. 597 (1984).

for alleged violations of N.J.S.A. 2C:5-2, conspiracy to commit murder; N.J.S.A. 2C:11-3, knowingly and willfully committing murder; N.J.S.A. 2C:39-5(b), knowingly and unlawfully possessing a firearm, a handgun, without a permit; and N.J.S.A. 2C:39-4, knowingly and unlawfully possessing a weapon, a handgun, with a purpose to use it unlawfully (P-75).[6] Following a jury trial, the respondents and Mr. Scarfo were acquitted of all charges.

5. On October 22, 1984, an indictment was handed up against respondent Leonetti in the U.S. District Court, Criminal No. 84-253, for two counts of extortion and one count of conspiracy to commit extortion contrary to 18 U.S.C. 1951 and 1952. The indictment charges Mr. Leonetti with seeking to influence and control the government of Atlantic City, through corruption, for the benefit and profit of the Scarfo organization and its associates.

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6. The subject incident was the murder of Vincent Falcone, a cement contractor in a Margate beach house. Falcone's body was found stuffed in the trunk of his automobile on December 21, 1979. At trial, Joseph Salerno, a former plumber, was the State's key witness. Salerno testified that he was in the bungalow when Falcone was killed, that respondent Merlino was also present, and that he saw Leonetti shoot Falcone while Merlino watched. According to Salerno, the murder had been ordered by Mr. Scarfo, following which Scarfo ordered him to help dispose of the body. The defense relied on numerous alibi witnesses who placed the respondents elsewhere at the time of the murder. The details of this trial received considerable attention in the press (P-108 to P-110).

As to Mr. Merlino, with the exception of his arrest and indictment on the Falcone murder charges previously described, he had not been charged with any other criminal acts until his indictment on July 22, 1985, charging him with conspiracy and hindering apprehension or prosecution contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 2C:29-3(a)(3).[7]

The only live witnesses at the hearing were the respondents who were called to testify by the Division (1T84-9 to 1T98-12). Each respondent was asked a number of questions concerning his sources of income and whether he "knew" or "had business dealings with" individuals who are reputed to be members of organized crime, most of whom are presently included on the exclusion list. Most notably, each respondent was asked whether he loaned Joseph Salerno $10,000 and charged him interest of $250 per week until the principal was repaid in a lump sum with money obtained from Mr. Scarfo. To each question the respondents invoked the Fifth Amendment right to silence.

The Division presented extensive hearsay evidence designed to prove that the respondents were career offenders, associates of career offenders and persons whose presence in a casino would be inimical to the interests of the State and

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7. The Division's motion to supplement the record with this indictment and permit the Commission to consider it was expressly unopposed by the respondent and granted by the Commission on July 24, 1985.

legalized gaming. The record consists of more than 3,000 pages of documents, including portions of the transcript of testimony from the Commission's Local 54 hearing.

As to Mr. Leonetti, the Division offered: the testimonies of Inspector Gino Lazzari of the Pennsylvania Crime Commission, Joseph Salerno, James Maher of the Federal Bureau of Investigation, Detective Dennis McGuigan of the State Commission of Investigation and Jeffrey Blitz of the Atlantic County Prosecutor's Office, all of which were given before this Commission in the Local 54 hearing (P-111); the testimony of James Maher given before Federal District Court Judge Stanley Brotman at Mr. Scarfo's sentencing hearing, held on June 25 and July 7, 1981 (P-1), which resulted from Scarfo's conviction of possession of a weapon by a convicted felon; the Local 54 Commission decision (P-113); portions of the 1980 through 1983 Pennsylvania Crime Commission Reports (P-104 to P-107) and numerous newspaper articles (P-108 to P-110).

Gino Lazzari testified as an expert on organized crime. His testimony was taken under oath, subject to cross-examination, though not by the respondents, and was based primarily on information received from purportedly reliable but undisclosed informants. Mr. Lazzari testified that the performance of his duties as special agent and later inspector of field operations brought him in frequent contact

with other police departments such as the Philadelphia Strike Force, the Philadelphia City Police Department, the Organized Crime Unit, New Jersey State Police, the FBI in Philadelphia and Newark, New Jersey. Prior to taking employment with the Pennsylvania Crime Commission, Mr. Lazzari had worked for the FBI for 33 1/2 years. For 17 of those years he was assigned to the Philadelphia organized crime unit and had investigated the Angelo Bruno crime family. During this time Lazzari personally developed his own top echelon informants (P-111 at 1000-1006). The following testimony on direct bears quotation:

> Q. The name Philip Leonetti, are you familiar with that name?
>
> A. Yes, I am.
>
> Q. Would you describe Mr. Leonetti to us?
>
> A. Philip Leonetti is Nicodemo Scarfo's nephew and a close associate. He has been arrested and acquitted on two murders that come to my attention. He is a fully initiated member of the Philadelphia family of La Cosa Nostra (P-111 at 1042-6 to 1042-14).

The Division offered the transcript of the testimony of Joseph Salerno, which was also given before the Commission during the Local 54 hearing. As with all the testimony offered at the Local 54 hearing, it was taken under oath, subject to cross-examination, but not by the respondents. Salerno's testimony was based on his experiences while a resident at 26-28 North Georgia Avenue in Atlantic City, the Scarfo home. Mr. Salerno has never been convicted,

indicted, arrested or charged with a crime (P-111 at 848). He is a former plumber and was the principal witness against Scarfo, Leonetti and Merlino at their trial for the murder of Vincent Falcone and is now in the federal protected witness program. Salerno testified that the origin of Scarf, Inc., a corporation formed by Leonetti and Vincent Bancheri on December 30, 1977 (P-86), was from Scarfo's last name (P-111 at 668), and that he was told by Bancheri that "Nick Scarfo was really the boss, but they couldn't have him in the corporation" (P-111 at 667). Scarf, Inc. a concrete contracting firm, is located at 28 North Georgia Avenue (P-111 at 675-676).[8]

Salerno also testified that he had been a victim of loansharking. In 1978 he encountered financial problems and went to Leonetti, whom he had met on a job site, for help (P-111 at 668-669). Leonetti loaned Salerno $10,000, and charged him interest of $250 per week until the principal was repaid in a lump sum (P-111 at 669-670). Salerno ultimately paid Leonetti $19,000 in principal and interest and the following spring of 1979 he declared

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8. On June 9, 1982, the Wall Street Journal reported that Scarfo lives with his wife and two youngsters in his mother's modest red brick apartment house on North Georgia Avenue. Scarfo offers little explanation as to how he finances his comfortable lifestyle. He says he simply does maintenance chores for his mother (P-108).

bankruptcy (Ibid.). According to FBI agent Maher,[9] Salerno stated that he had asked Mr. Leonetti if he could arrange through Nicodemo Scarfo to forgive the thousand dollars back interest. Salerno then told Maher that, when Salerno inquired of Mr. Leonetti whether or not Scarfo was aware of the loan, Leonetti replied, "how do you think I got the money" (P-111 at 486-487). Salerno's later testimony concerning this matter bears quotation:

By Commissioner Danziger:

Q. You've told us about a loan that you received from Mr. Leonetti, $10,000. Did you ever, other than that one loan, did you ever receive any other loans from Mr. Leonetti, Mr. Scarfo?

A. No, No, sir.

Q. And did Mr. Scarfo have anything to do, if you know, with the loan that you received from Leonetti?

A. I don't know definitely, but I would think the money came from there.

Q. Why do you think that?

A. Because Philip was supposed to go to Cherry Hill, New Jersey and we were in Brigantine and he was back in a half hour with the money. He said he was going to Cherry Hill. That's where he told me he went to get it, but he was back too fast. But I didn't ask him where he got the money.

Q. At any time did you ever talk to Leonetti about where he got the money?

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9. Maher's testimony is based on an interview with Salerno at the Strike Force office in Philadelphia. Notes of that interview are contained in a Form 302-Surveillance Report. Further details of his testimony are provided post at 20-22.

A. No. I would never do that.

Q. Did you ever ask Leonetti whether Scarfo had any involvement with this loan though?

A. No. I wouldn't never ask him any questions at all.

....

Q. Did Maher talk to you on, do you remember February 22, 1980?

A. Yes.

Q. If you know, did Maher take notes or make a report of that conversation with you?

A. Yes, he did.

Q. Let me read you something and tell me if this is an accurate reflection of what you said --

A. Okay.

Q. -- on February 22, 1980?

A. "Salerno repaid the $9,000. He inquired of Leonetti whether Nicky Scarfo was aware that Salerno had borrowed the money. Leonetti replied 'How do you think I got the money.'"

A. Yes, that's true. I remember that now. I did.

Q. You did what?

A. I did probably ask Philip where the money came from at one time or another.

Q. And is that what Leonetti supposedly said?

A. Yes [P-111 at 869-13 to 871-15].

Salerno further testified that he was present in the apartment when Vincent Falcone was murdered and that Philip Leonetti shot Falcone at the request of Scarfo in the presence of Lawrence Merlino (P-111 at 787). According to

Salerno, most of the 38 witnesses who appeared for the defense at the murder trial had lied, including a Margate police officer who Salerno alleged was "paid off."[10]

It was also Salerno's testimony that one day Scarfo showed him a Philadelphia magazine article where reference was made to the murders of Peppy Leva and Municipal Court Judge Edwin Helfant.[11] "They made me read [the] magazine... [and said this] is what you can get away with... They were asking me for my guns and telling me they wanted to get this guy, Anthony DePasquale, and kill him. They were telling me these kinds of things" (P-111 at 877-878).

Finally, Mr. Salerno testified that Mr. Leonetti attempted to corrupt the affairs of Local 54 by inflating a plumbing bill (P-111 at 720-723).

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10. The Falcone murder trial received considerable publicity and many of the newspaper articles were admitted into evidence in this proceeding (P-108 to P-110). According to several articles, particularly damaging to the State's case was the testimony of William G. Breland, a detective-sergeant from Margate, who disputed state testimony that Mr. Scarfo's black Cadillac had been parked on the street outside the bungalow where Falcone was murdered. Breland said that he had been strolling in the area about the time of the slaying and the Cadillac was not there. Breland, according to reports, was later dismissed from the police force.
11. On March 4, 1980, The Record-Hackensack reported that Mr. Leonetti was questioned about the murder of former Somers Point Municipal Judge Edwin Helfant.

Mr. McGuigan's testimony, also given before this Commission in the Local 54 hearing, concerned the contents of a telephone list seized from Mr. Scarfo. Mr. McGuigan testified first, that he was employed by the State Commission of Investigation as a special agent assigned to investigate organized crime, white collar crime and political corruption. Prior to his employment with the SCI, he was employed as an investigator by the Atlantic County prosecutor's office for approximately 3 1/2 years and was assigned to the special prosecution section. His responsibilities were to identify, investigate and monitor organized crime activity in the Atlantic County area (P-111 at 905-906). McGuigan testified that he seized a photostatic copy of a telephone list from Scarfo on December 23, 1979, following Scarfo's arrest for the murder of Falcone and that a duplicate of that list was later found in Scarfo's dresser drawer at 26 North Georgia Avenue (P-111 at 906, 908). The list (P-2, P-3, P-8) contained the telephone numbers of numerous individuals who have criminal records and have been associated with criminal activity. Included in the list is Philip Leonetti.[12] Mr. McGuigan also acknowledged "that there were quite a few telephone numbers that had no known associations with Mr. Scarfo or other elements of organized crime" (P-111 at 912).

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12. Other individuals included on the list are Salvatore Merlino, Saul Kane, Frank Gerace and Frank Materio.

Mr. Blitz's testimony, given before this Commission in Local 54, was based on his investigation of the Falcone murder. Mr. Blitz testified that he was employed by the Atlantic County prosecutor's office as chief assistant prosecutor for investigations and has been with the office since 1968. He has overall supervision of all investigations conducted by the office including homicides and organized crime (P-111 at 1125-1126). Blitz was involved in the investigation and subsequent prosecution of persons who were alleged to have killed Vincent Falcone. During an interview with Salerno, who Blitz said was not a suspect in the homicide (P-111 at 1131), Blitz was told by Salerno that he was present in the apartment when Falcone was shot, that the perpetrator of the slaying was Philip Leonetti, who acted at the request of Nicodemo Scarfo, and that Merlino was present (Ibid.).

Special Agent Maher of the FBI gave lengthy testimony before this Commission during the Local 54 hearing and before Judge Brotman during the Scarfo sentencing hearing. On both occasions, his testimony was taken under oath, subject to cross-examination, albeit not by the respondents, and was based for the most part on what he was told by Salerno. Mr. Maher, a special agent with the FBI since 1970, testified that he was currently assigned to the Organized Crime Squad, Philadelphia Division, and that his duties were

to investigate criminal violations committed by persons or members of the Bruno family of La Cosa Nostra. Mr. Maher gave a definition of La Cosa Nostra and gave testimony of how a person becomes a member of La Cosa Nostra. He testified about his sources of information, which included what he described as "top echelon informants."

Agent Maher testified that he was told by Salerno that he borrowed $10,000 from Philip Leonetti, that it was a loanshark loan and that the money came from Mr. Scarfo (P-1 (day one) at 9, 10, 38, 39). Mr. Maher insisted that Mr. Salerno's testimony from the Falcone murder trial and testimony from his statement to him were not in conflict (P-1 (day two) at 10). He further testified that he checked out the information he got from Salerno by securing records from the bank and by checking with Salerno's father (P-1 (day two) at 41-42).

The Division also offered the Commission's decision in Local 54. There, based primarily upon the evidence summarized above, this Commission found by a preponderance of the evidence that "Philip Leonetti is closely associated with Scarfo and has engaged with him in a criminal enterprise" (P-113 at 11). The Commission also found that Mr. Leonetti attempted to corrupt the affairs of Local 54 by inflating a plumbing bill (P-113 at 24). No specific findings were made as to Mr. Merlino. Ibid.

The Division offered portions of several reports promulgated by the Pennsylvania Crime Commission (1980-1983) (hereafter Reports). The Reports may be characterized as an annual "Who's Who of Organized Crime." For the most part, these volumes generally describe organized crime activity and are replete with feature articles concerning the underworld. The Reports contain brief resumes and in some cases pictures of individuals purported to be gangsters or members of organized crime cartels such as La Cosa Nostra. For example, 3" x 3" pictures of Philip Leonetti, and others, such as Mario Riccobene, Charles Warrington and Joseph Bongiovanni, all of whom are on the Commission's exclusion list, appear on page 11 of the 1983 Report in the context of an article entitled "The Mob with the Changing Face." On page 64 of the same report, Leonetti is identified as a member of La Cosa Nostra.

Finally, the Division offered numerous newspaper articles, from, among others, the New York Times, the Philadelphia Daily News, the Wall Street Journal, the Bergen Record, the Newark Star-Ledger, the Atlantic City Press, the Philadelphia Bulletin, the Philadelphia Inquirer, the Trenton Times and the Camden Courier Post (P-108 to P-110), all of which assert that Mr. Leonetti is a member of organized crime and an enforcer for his uncle, Nicodemo Scarfo.

As to Mr. Merlino, the Division offered the testimonies of McGuigan, Salerno and Lazzari, given before this Commission in Local 54 (P-111); the Pennsylvania Crime Commission Reports 1980-1983 (P-105 to P-107) and essentially the same newspaper articles. As previously noted, after the proceedings in the OAL were completed, the Division supplemented the record with the July 22, 1985, indictment charging respondent Merlino with conspiracy and hindering apprehension or prosecution. The indictment states that Merlino was involved in concealing the dead body of Salvatore Sollena. The indictment states that Merlino and co-conspirator Ligambi met with a person identified as Francis Kelly, an unindicted co-conspirator, at Angeloni's II restaurant bar in Atlantic City on November 6, 1983, at which time Merlino gave Ligambi the keys to a Cadillac and allegedly told him to dispose of the car and the body. The car was later abandoned in the parking lot of the Four Seasons Diner in Camden County, where the police discovered the body in the trunk of the Cadillac.

Mr. McGuigan testified at the Local 54 hearing that the telephone list (P-8) seized from Scarfo following an arrest for the murder of Falcone contained the name of Lawrence Merlino in code (P-111 at 909). As previously noted, the list also contained the names of other individuals with no known connections to organized crime. For example,

several lawyers and dentists were listed; by and large, however, these numbers were not in code (P-111 at 973-974).

Mr. Salerno testified at the Local 54 hearing that Mr. Merlino was present when the Falcone murder took place (P-111 at 694), and that Mr. Merlino helped dispose of the body (P-111 at 699). Mr. Lazzari testified at the Local 54 hearing that Larry "Yogi" Merlino was recently made a member of the La Cosa Nostra family (P-111 at 1043).

The 1983 Crime Commission Report, the latest one offered in evidence, includes Merlino's name as well as Mr. Leonetti's. His name appears in an article about La Cosa Nostra. On page 27 of the Report, there is an excerpt of a conversation, which was purportedly intercepted by the FBI and introduced in evidence at the federal trial of Harry Riccobene and five other reputed mobsters who were convicted on racketeering charges on May 7, 1982. Among the participants in the conversation are Larry Merlino, Sal Merlino (respondent's brother) and Frank Sindone, all of whom are identified as members of La Cosa Nostra.

Finally, as with Mr. Leonetti, numerous newspaper articles offered in evidence allege that Mr. Merlino is an associate of Mr. Scarfo and others, a member of an organized crime cartel and the perpetrator of alleged criminal activities.

In determining whether the Division has met its burden, we must deal first with the Fifth Amendment and evidentiary issues.

I. FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

Both respondents were called to testify by the Division and both invoked their Fifth Amendment privilege in response to questions posed by the Division's attorney. In his initial decision, the ALJ determined that since the respondents have a "reasonable apprehension of prosecution" no adverse inferences can be drawn from the invocation of their Fifth Amendment right to silence (A-11). With due respect to the ALJ, we believe his misstatement of the issue raised by the respondent's invocation of the right to silence has again resulted in an erroneous conclusion as to the evidential consequences of "taking the Fifth." As we attempted to explain in Merlino and Leonetti, the question of the reasonableness of the respondent's perceived apprehension of prosecution goes only to whether invocation of the right is proper. As we further stated:

> The question of whether they have properly invoked the privilege in this context is not at issue here. (citation omitted). Rather, the focus of the present inquiry concerns not the propriety vel non of respondents' assertion of the privilege against self-incrimination, but the consequences that should flow from its invocation. (Opinion at 28-29; emphasis supplied).

The ALJ is mistaken in his belief that "the conclusions reached in both the initial decision and the final decision [in Merlino and Leonetti] are basically compatible" (A-8). We have held that adverse inferences may be drawn as a result of the respondents' failure to respond to the evidence against them, notwithstanding the fact that their silence was maintained under the Fifth Amendment. We adhere to the principles enunciated in the Commission's earlier Merlino and Leonetti opinion concerning the Fifth Amendment and related issues. The analysis set forth by the ALJ in his second initial decision (A-8 to 11) is no more than an iteration of that espoused in his first initial decision. This Commission has already determined that the cases the ALJ relied upon do not support the conclusion that no adverse inferences may be drawn from the respondents' failure to refute the evidence against them due to their Fifth Amendment right to silence. Therefore, we reject that portion of the initial decision that is in conflict with our earlier opinion on the proper treatment of this issue.

Moreover, to the extent that the ALJ expresses the view that the existence of the indictment prevents the drawing of adverse inferences from Mr. Leonetti's failure to testify, we must disagree. It is well-settled that adverse inferences may be drawn even when a party is the "target" of a criminal investigation at the time of the civil proceeding or when

indictments have been handed up. The indictment returned against Mr. Leonetti is relevant only to the threshold issue whether the claim of the privilege was justified.[13] It is not dispositive of the issue whether the factfinder may justifiably draw adverse inferences from the respondents' silence. Decisions that have dealt with this issue have held that, notwithstanding the existence of an indictment, there are consequences that may flow from the invocation of the privilege in a civil proceeding. See, e.g., McGautha v. California, 402 U.S. 183 (1971); United States v. Kordel, 397 U.S. 1 (1970); Hoover v. Knight, 678 F. 2d 578 (5 Cir. 1982); Diebold v. Civil Service Commission of St. Louis County, 611 F.2d 697 (8 Cir. 1979); Arthurs v. Stern, 560 F. 2d 477 (1 Cir. 1977); United States v. White, 589 F. 2d 1283 (5 Cir. 1971).

In Arthurs v. Stern, supra, a physician was accused of writing illegal prescriptions and disciplinary charges were brought before the appropriate board in the Commonwealth of Massachusetts. A criminal investigation was also begun, and indictments were handed up. The physician obtained a

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13. There is no argument that "[b]eing the target of a grand jury investigation is sufficient of itself to support a Fifth Amendment Claim." State v. Williams, 112 N.J. Super. 563, 568 (App. Div. 1970).

stay of the disciplinary proceeding in federal district court on the grounds that his Fifth Amendment privilege and general notions of due process would be violated. The Court of Appeals reversed and held that the self-incrimination principles did not require that the disciplinary proceedings be stayed, since plaintiff would neither be "compelled" in those proceedings to furnish testimonial evidence that might incriminate him in later criminal proceedings, nor would his refusal to testify result in an automatic penalty, i.e., termination of his medical license. Rather, his silence in the face of accusation would be treated only as a relevant fact not barred from evidence by the Fifth Amendment. The court stated:

> The board is not constitutionally forbidden from drawing an adverse inference if a doctor refuses to testify at a disciplinary hearing. The board is not conducting a criminal trial, and civil proceedings are governed by a different set of Fifth Amendment principles. In civil cases, the state may not force incriminating testimony from a citizen by threatening penalties or automatic unfavorable judgments. (citation omitted). But this principle does not control when the only consequence of silence is the danger that the trier of fact will treat silence as evidence of guilt. [560 F. 2d at 478.].

Similarly, in the instant case, respondent Leonetti was neither "compelled" to furnish testimonial evidence that might incriminate him in later criminal proceedings, nor did his refusal to testify result in an automatic unfavorable

judgment, i.e., exclusion from the licensed casino hotels in Atlantic City. Rather, the inferences to be drawn from the respondent's silence were to be considered by the fact finder along with other evidence and testimony in the record before reaching a conclusion. Quite plainly, the recent indictment returned against Mr. Leonetti should not have prevented the ALJ from drawing adverse inferences if otherwise justified in reaching his ultimate findings of fact.

Finally, both the ALJ and the respondents assert that adverse inferences may not be drawn when a respondent does not have the burden of proof (A-10; Rb at 5), citing Bastas v. Bd of Review Dept. of Labor and Ind., 155 N.J. Super. 312 (App. Div. 1978). In actuality, in most cases where the privilege has been asserted by a party defendant, and courts have nonetheless found it appropriate to draw the adverse inference, the party did not have the burden of proof. See, e.g., Baxter v. Palmigiano, 425 U.S. 308 (1976); Arthurs v. Stern, supra; Levin v. Levin, 129 N.J. Super. 142 (App. Div. 1974); Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527 (App. Div. 1967), certif. denied, 50 N.J. 404 (1967); Amerada Hess Corp. v. Quinn, 143 N.J. Super. 237 (Law Div. 1976).

Here, there is no argument that the Division bears the burden of proving by a preponderance of the evidence that the respondents meet one or more of the criteria set forth in

section 71(a) and N.J.A.C. 19:48-1.3. To put it another way, the respondents are not required in this proceeding to establish that they do not meet the criteria set forth in section 71(a) and N.J.A.C. 19:48-1.3. Nevertheless, this does not necessarily mean that the respondents cannot suffer any adverse inference if they refuse to come forward in the face of damaging and otherwise unrebutted proofs which, if untrue, should be within the respondents' power to refute. It means only that if the respondents' refusal to answer were the only evidence on point to support the inferences, then no adverse findings would be justified.

The inferences flowing from the refusal to testify are permissible, not mandatory. Viewing the record as a whole, we elect to draw inferences from Mr. Leonetti's failure to testify, which we shall address in Part IV of this opinion. As to Mr. Merlino, viewing the record as a whole, we may also infer from his refusal to testify that he was unable to respond to the Division's allegation of his involvement in organized crime.

II. EVIDENTIARY STANDARD

At the outset it must be understood that the appropriate evidential standard, as explained at some length in our previous Merlino and Leonetti opinion, is that contained in section 107(a)(6) of the Casino Control Act. In his second initial decision, although the ALJ did not

expressly identify the standard he employed in evaluating this case, there are some indications that he may have maintained his earlier position that the so-called "residuum rule" applies. For example, the judge found that the testimonies and reports offered by the Division "were not corroborated by competent evidence" (A-14). To the extent that the ALJ considered "competent evidence" to be the same as "legally competent evidence," his analysis varies from the Commission's position. "Legally competent evidence" is the operative language of the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-15.8, the so-called "residuum rule." The residuum rule precludes the judge from reaching any finding which is not supported by evidence which would be admissible in a jury trial.[14]

In its previous opinion in Merlino and Leonetti, supra, we determined that the residuum rule did not apply to hearings conducted pursuant to the Casino Control Act. Rather, the appropriate standard to be applied was that contained in section 107(a)(6) of the Act, which describes

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14. The seminal case in New Jersey setting forth the residuum rule is Weston v. State, 60 N.J. 36, 51 (1972). The residuum rule was created by the New York Court of Appeals in Carroll v. Knickerbocker Ice Co., 218 N.Y. 435, 113 N.E. 507 (1916). It is interesting to note that the same court that created it subsequently proclaimed in a footnote in 300 Gramatan Ave. Associates v. State Division of Human Rights, 45 N.Y. 2d 176, 179, 379 N.E. 2d 1183, 1185 (1978), that the doctrine "no longer obtain[s]."

the kind of evidence that may be admitted and the type of evidence which shall be sufficient to support a finding and specifically authorizes the Commission,[15] to base ultimate factual findings upon any relevant evidence, including hearsay,[16] regardless of the fact that such evidence may be inadmissible in a civil action, so long as that evidence is the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs.

After a thorough reconsideration of the conflict between our statutory provision and the OAL regulation, as well as the subsequent developments cited by the ALJ in his first initial decision, we adhere to the views expressed in Merlino and Leonetti; the principles enumerated therein remain fully viable. Therefore, we reaffirm the rationale espoused in that opinion and reject the notion that findings must be supported by evidence which would be admissible in a court of law, i.e., "legally competent evidence." We are

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15. As previously noted, it is presumed that the OAL stands in the shoes of the Commission when hearing cases pursuant to the Casino Control Act.
16. Throughout this discussion, reference may be made to hearsay evidence as being admissible in agency proceedings, but not sufficient alone to support a determination under the residuum rule. It should be understood that such references are to hearsay which does not fit within any of the numerous exceptions to the hearsay rule applicable to court proceedings. See Evid. R. 63.

bound to decide this matter under the clearly articulated statutory test for reliability.

In our previous opinion, we also rejected the assertion that section 107(a)(6) is consistent or harmonious with the residuum rule, noting that the former is the "direct antithesis of the latter." At the oral argument on July 24, 1985, counsel for respondent Leonetti advised that he maintained his view that the two standards are compatible. Counsel iterated his position that, although pursuant to section 107(a)(6) hearsay may be used in and of itself to support a finding of fact, in the final decision-making process there still must be a residuum of legal and competent evidence to support a judgment or "ultimate finding." A similar view is expressed by the dissent.

As noted, however, we have ruled differently in this very case. Moreover, we see no basis to revise that ruling. As we stated in our earlier Merlino and Leonetti opinion, we find no justification in law or logic for any distinction between the terms "a finding" as used in section 107 and "ultimate finding of fact" as utilized in N.J.A.C. 1:1-15.8. The operative language of section 107 which we are obliged by law to implement is: "Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious

affairs...," regardless of the rules of court, statutes or common law which might make such evidence inadmissible in a court of law. We previously noted too that the Supreme Court drew no such distinction in the Weston case. It announced that the rule governing administrative law in New Jersey "is that a fact finding or legal determination cannot be based upon hearsay alone." [60 N.J. at 51]. However, that court-made rule was later abrogated by the Legislature for purposes of the Casino Control Act when it adopted the antithetical rule now embodied in N.J.S.A. 5:12-107(a)(6).

Moreover, as we explained in our earlier Merlino and Leonetti opinion, we do not read the Appellate Division decision in In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, 180 N.J. Super. 324 (App. Div. 1981), mod. 90 N.J. 361 (1982) to require the application of the residuum rule, as suggested by the dissent. We find it apparent that in the Boardwalk Regency case the Appellate Division was not required to resolve any conflict between section 107(a)(6) and the residuum rule. Section 107(a)(6) was itself sufficient to dispose of the admissibility and legal sufficiency questions, and the court so noted. While the court opined, in response to the appellants' contentions to the contrary, that there was "an ample residuum of legal and competent evidence" in the record to support the Commission's findings, we do not take that

statement as a determination that the residuum rule must also be satisfied. The issue was not addressed by the Supreme Court.

Thus, we adhere to the view that the two standards are antithetical and we shall continue to predicate our findings upon evidence, including hearsay evidence, if it is the sort that responsible persons are accustomed to rely in the conduct of serious affairs, without regard to rules of court or other agencies or common law which may make such evidence inadmissible in a court of law.

Finally, we must disagree with the notion advanced by the dissent that the residuum rule is a matter of fundamental fairness and due process. We note that a growing number of federal courts when construing the Administrative Procedure Act, 5 USCA §500 et seq., do not apply the residuum rule. See, e.g., Johnson v. United States, 628 F. 2d 187, 190 (D.C. Cir. 1980) (special agent removed from the Bureau of Alcohol, Tobacco, and Firearms based on out-of-court statements of eyewitnesses collected by BATF investigator); Hoonsilapa v. Immigra. and Natural Service, 575 F. 2d 735, 738 (9 Cir. 1978) (suspected alien ordered to be deported by Board of Immigration based on hearsay exhibits); School Bd. of Broward Cty., Fla. v. H.E.W., Etc., 525 F. 2d 900 (5 Cir. 1976) (county school board denied federal aid by Department of Health, Education and Welfare based on out-of-court

statement of school representative); Zannino v. Arnold, 531 F. 2d 687 (3 Cir. 1976)(petitioner denied parole based on hearsay exhibits); Wathen v. United States, 527 F. 2d 1191 (Ct.Cl. 1975), cert. den. 429 U.S. 821 (1976) (Internal Revenue agent removed from service based on hearsay investigative reports). See also Richardson v. Perales, 402 U.S. 387, 402 (1971); Dutton v. Evans, 400 U.S. 71 (1970).

From the above, it is clear that "[t]he due process clause should not be treated as a device for freezing... evidential procedure ... in the mold of trial procedure." United States v. Fatico, 599 F.2d 707, 712 (2 Cir. 1978). That is to say, due process is not a uniform command requiring strict adherence to court rules. Rather, "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation" (Cafeteria and Restaurant Workers v. McElroy, 367 U.S. 886, 895 (1961). In any event, the statute is unambigious and we cannot ignore or revise it. Thus, the standard of section 107(a)(6) must be applied. The question is whether that standard has been met here.

III. THE LEGAL SUFFICIENCY OF THE DIVISION'S PROOFS

A brief review of the evidence offered is necessary.

This case is somewhat unusual in that it does not involve conflicting evidence. The only evidence in this case was offered by the Division, and it consists of more than 100 hearsay exhibits. The respondents offered no evidence, and claimed the Fifth Amendment privilege in response to questions posed by the Division. The Division's proofs include, but are not limited to, voluminous testimonies given before other tribunals, Pennsylvania Crime Commission Reports, the Leonetti and Merlino indictments, the Local 54 decision and newspaper articles.

The tenor of the evidence is not in dispute, and, if the evidence is believed, leads inexorably to the conclusion that the respondents should be excluded from the casino hotels in Atlantic City. The issue posed with respect to the evidence is its reliability for purposes of section 107(a)(6).

At the outset, we note that the findings of this Commission in Local 54 (P-113), though obviously relevant and of an evidentiary nature, are not determinative of the outcome of this proceeding. As we have previously indicated, in Local 54 this Commission found by a preponderance of the evidence that "Philip Leonetti is closely associated with Scarfo and has engaged with him in a criminal enterprise." No findings were made as to Mr. Merlino. Since Mr. Leonetti was not a party to the local 54 proceeding, the previous

findings are not binding against him. See State v. Gonzalez, 75 N.J. 181 (1977).

Some of the other evidence, we believe, consists of nothing more than rumor and opinion on the part of unidentified out-of-court declarants. Such evidence should be given little or no weight and would not constitute reliable evidence. Included in this category are the newspaper articles. Other evidence, however, though insufficient by itself to support a finding, is not totally without value. Included in this category are the Pennsylvania Crime Reports[17] and Scarfo's telephone lists. Finally, as we shall explain, we find that other evidence in the record, notwithstanding its hearsay character, is sufficiently convincing to a reasonable mind and reveals sufficient assurance of its truthfulness, to warrant a final order of exclusion against both respondents. Included in this category are the testimonies of Salerno and Lazzari, given before this Commission in Local 54.

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17. The ALJ correctly observed that the authority and powers of the Pennsylvania Crime Commission were not set forth in the record (A-7). For this reason, we believe he erred in finding that the Crime Commission was not a member of the law enforcement community (A-12). At most, it may be said that the portions of the reports in evidence give no indication that the Crime Commission is or is not a law enforcement agency. Further, the ALJ stated that the Reports "concede that there is an absence of a factual basis for much of their contents" (A-8). The dissenting Commissioners seemingly concur with the ALJ's assessment of the Reports and cite that portion of the 1980 Report which offers two possible theories as to why Angelo Bruno was murdered, and concludes that it may be years before the truth is known (dissenting opinion at 5). We do not read this passage as an acknowledgement that there is an absence of factual basis for the contents of the Report. Rather, we find it commendable that where the Crime Commission's conclusions were not supported by hard facts, they acknowledged as much. We note also that there was no such equivocation in the passages asserting that the respondents were members of La Cosa Nostra.

At the outset, it should be emphasized that section 107, while permitting the use of hearsay in reaching ultimate findings of fact does not, as correctly noted by the dissent, call for an "anything goes" approach. To the contrary, section 107 imposes restraints on the type of hearsay that may be relied upon and requires that it be such as a reasonable mind under all the circumstances would rely upon in the conduct of serious affairs. The problem then is how to interpret and apply this standard to this case. Many factors have to be considered, e.g., whether or not the hearsay is corroborated; whether the hearsay is contradicted by direct or other reliable hearsay evidence; whether the hearsay is disputed by the oral testimony of the respondents. Quite plainly, there is good hearsay (e.g. Richardson v. Perales, supra) and bad hearsay (e.g., Reil v. United States, 456 F. 2d 777 (1972)); and, in fact, there may be times when hearsay evidence is deemed to be even more reliable than legally competent evidence. A case in point is Richardson v. Perales, supra.

In Perales, a truck driver sought disability benefits for a back injury. At the hearings, the examiner allowed into evidence, over the objection of claimant's attorney, a number of unsworn medical reports of five specialists who had examined the claimant at the request of the relevant agencies but who were not present at either

hearing, and did not testify. The claimant objected to the evidence on the ground that it was hearsay and its admission deprived him of the right to be confronted by the witnesses against him and of the right to cross-examine them. The examiner also allowed a Dr. Lewis A. Leavitt to testify over the objection of the claimant. Leavitt was flown in by HEW to testify as an expert in the case. He had never examined Perales and his testimony consisted of his interpretation of the medical reports of the absent specialists, which reports, in his opinion, indicated that Perales was not disabled. The only direct evidence from live witnesses concerning the physical condition of the claimant was from the claimant himself and from his physician, a Dr. Morales, who had examined and treated him. This evidence indicated that the claimant was disabled and supported his claim for the social security benefits. The examiner denied Perales' claim based on the reports of the specialists, even though they were not available for cross-examination. This decision was affirmed by the Appeals Council but reversed by the District Court[18] and the Court of Appeals.[19]

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18. 288 F. Supp. 313 (W.D. Tex. 1968).
19. Cohen v. Perales, 416 F. 2d 1250 (5 Cir. 1969), on the grounds that the agency had not adduced "substantial evidence" to sustain the denial of benefits. The Supreme Court has defined substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 217 (1938). We note the striking similarity to the language of section 107(a)(6).

The United States Supreme Court granted certiorari in order to review and resolve the important procedural due process issue. The Court reversed and remanded. Perales, supra, 402 U.S. 387. Following a discussion of the conflicting medical evidence, the Court concluded that:

> a written report by a licensed physician who has examined the claimant and who sets forth in his report his medical findings in his area of competence may be received as evidence in a disability hearing and, despite its hearsay character and an absence of cross-examination, and despite the presence of opposing direct medical testimony and testimony by the claimant himself, may constitute substantial evidence supportive of a finding by the hearing examiner adverse to the claimant, when the claimant has not exercised his right to subpoena the reporting physician and thereby provide himself with the opportunity for cross-examination of the physician. [Id. at 1428].

Thus, in Perales the Court found that an agency could reject legally competent evidence and rely upon hearsay in reaching its ultimate finding that the claimant was not entitled to disability benefits.

In reaching its conclusion, the Perales Court looked to certain factors which "assure underlying reliability and probative value": (1) the out-of-court declarants had no bias or interest in the outcome; (2) the reports were available prior to the hearing; (3) the claimant could have subpoenaed the out-of-court declarants; (4) there

was no inconsistency in the reports, which represented an impressive range of examination to which the claimant was subjected; (5) the case involved a denial of proposed benefits, not the withdrawal of existing ones,[20] and, (6) written medical reports by treating physicians have an inherent reliability and probative worth recognized by the courts (Id. at 402-406). Since these factors have subsequently been applied by the courts in a variety of circumstances (e.g., Johnson, supra, 628 F. 2d 187 (removal of federal employee); School Bd. of Broward Cty., Fla., supra, 525 F.2d 900 (loss of federal aid by school board), we shall now consider the application of the Perales guidelines to the hearsay testimonies of Salerno and Lazzari, which undoubtedly constitute the most notable and damaging evidence in this record.

As to Salerno, several factors are noteworthy. (1) He had no apparent bias or interest in the outcome of this

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20. Here, the Court distinguished such cases as Goldberg v. Kelly, 397 U.S. 254 (1970), which involved the termination of welfare benefits, where the Court reasoned different rules of fair play are required, since the recipient may suffer a "grievous loss." Perales, supra, at 406-407. In Goldberg, the Court had held that the respondent was entitled to the full panoply of procedural protections, including the right to confrontation.

proceeding.[21] (2) The transcript of his testimony was available to the respondents prior to the hearing. (3) The respondents did not attempt to secure the presence of Mr. Salerno. (4) Mr. Salerno's testimony was taken under oath and was corroborated by the testimony of Agent Maher. (5) Mr. Salerno was subject to cross-examination by counsel for Local 54 and its officers who attempted to discredit him generally. Moreover, on one occasion, Mr. Salerno's account was subject to cross-examination by a party, namely, Mr. Scarfo, who did have a similar motive as would the instant respondents to assail Mr. Salerno's specific testimony about their relationship to organized crime. We refer here to Mr. Scarfo's sentencing hearing. There, FBI agent James Maher testified regarding what he was told by Salerno. In that proceeding, the respondent did have a similar motive as would the instant respondents to undermine Mr. Salerno's testimony, since proof of the accusations contained therein could very well have resulted in Mr. Scarfo's receiving a harsher sentence. Counsel for Scarfo vigorously cross-examined Agent Maher concerning the alleged usurious loan by respondent

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21. It will be recalled that the Salerno testimony emanated from the Local 54 hearing in which union officials Gerace and Materio were the parties. Mr. Salerno, who was in the federal witness protection program, was requested to testify, and had no particular interest in whether either Gerace or Materio would be found to be disqualified by the Casino Control Act as a result of his testimony. As to Leonetti and Merlino, since neither one was a party to that proceeding, there was no reason for Mr. Salerno to fabricate a scenario as to the respondents, since no findings would be made as to them.

Leonetti.[2]2 The testimony reveals that Maher's adoption

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22. Q. Now, subsequent to the time of the murder, and prior to his trial, Mr. Salerno told you that he still owed Philip Leonetti 1,000 dollars; correct?
A. Yes, sir.
Q. And, he said that money was a loan shark loan; did he not?
A. Yes, sir.
Q. And, he said that Philip Leonetti told him that money came from Mr. Scarfo, didn't he?
A. Yes, sir.
Q. Now, when he testified in court I asked him who he owed the money to he said suppliers; is that correct?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir, it is.
Q. Now, sir wouldn't you say that testimony from the trial and testimony from his statement to you was in, in conflict?
A. No, sir.
Q. Why not?
A. Because my recollection is, sir that the line of questioning was directed toward his having declared bankruptcy and certainly you wouldn't list a loan shark debt in a bankruptcy application, sir.

. . . .

Q. Now, with regard to Joseph Salerno, he was not an informer for you. You are not saying he was reliable or he wasn't, are you?
A. No, sir.
Q. Are you saying Mr. Salarno (sic) is not considered to be by you to be reliable?
A. He is not an informant.
Q. Is Mr. Salerno to (sic) reliable?
A. I believe his story. Yes, sir.
Q. You believed his story?
A. Yes.
Q. I'm asking you, this is, he has proven himself to be reliable?
A. As far as I'm concerned he is.
Q. As far as you're concerned. Despite the fact that the jury didn't believe him?
A. Despite the fact the jury didn't believe him. Yes, sir.
Q. And, Mr. Salerno told you that he borrowed this money

of the Salerno testimony was not based on blind faith. Rather, he checked out the details of Salerno's story and

(Footnote #22 continued)

from Mr. Leonetti, right?

A. Yes.
Q. He didn't tell the jury that, right, when he was asked?
A. The question you read to me earlier?
Q. Yes.
A. As I understand the question, they related to questions regarding the bankruptcy proceeding.
Q. Sir, that is the way you understood it. I tried the case, sir.
A. I remember the line of questions.

. . . .

Q. Did Mr. Salerno tell you that he borrowed 10 thousand dollars from his father to pay Philip Leonetti? Do you recall that?
A. Yes, sir I do.
Q. Did you check with his father?
A. Yes.
Q. Did his father know where the money went?
A. He did not know the individuals to whom the son paid the money.
Q. Didn't Mr. Salarno (sic) testify at the trial that he loaned his son money because he needed money to support his family?
A. I don't know what Mr. Salarno (sic) testified to.
Q. Did you bother to check it out to see if your information was reliable, the information you were getting from Joe Salerno?
A. Mr. Simone --
Q. Did you bother to check it out?
A. Yes, I did.
Q. Didn't you check the transcript of the trial?
A. No, sir I, I secured the records from the bank.
Q. It's a fact Joe Salerno's father got the 1,100, the money --
A. Yes.
Q. I do know what Joe Salerno told his father with regards to where the money went?
A. I know he told his father that it was to repay a loan shark debt and also know he did not identify for his father the persons to whom he was going to pay the money.

[P-1 (day two) at 10-3 to P-1 (day two) at 43-9].

was convinced that Salerno was telling the truth. Moreover, it should be observed that Salerno's testimony was not contradicted by direct evidence or even other hearsay. Nor was Salerno's testimony disputed by the oral testimony of the respondents. Cf. Perales, supra (claimant, through his testimony and the testimony of his personal physician, denied out-of-court statements of medical experts contained in hearsay medical reports, to the effect that he was not disabled); Zannino, supra (defendant, through his testimony, denied out-of-court statements of congressional witness contained in hearsay FBI parole report to the effect that he was a prominent member of a criminal syndicate in the Boston area); Johnson, supra (respondent, through his testimony, denied out-of-court statements of disinterested witnesses to automobile event contained in hearsay investigative reports, to the effect that he violated the Bureau's policies). Rather, respondent Leonetti invoked the Fifth Amendment in response to questions posed by the Division concerning whether he knew an individual named Salerno, or had loaned him $10,000 at a usurious rate of interest with money provided by Scarfo (IT97-24). (5) This case involves the withdrawal of a benefit, i.e., the right to enter the casino establishments in Atlantic City, which is of no great consequence and pales to insignificance when compared with the State's interest in maintaining public confidence and

trust in the casino industry. (6) Salerno's testimony was taken under oath and is based on his own experience and firsthand observations while a resident at 28 North Georgia Ave., the home of Scarfo. We find that the Salerno testimony satisfies most of the Perales guidelines.

Gino Lazzari, the Crime Commission employee and former FBI agent, testified in Local 54 that Philip Leonetti and Lawrence Merlino were "made" members of the Philadelphia family of La Cosa Nostra (P-111 at 1042). Mr. Lazzari's statement is purportedly based for the most part on information derived from reliable but undisclosed informants. As with Salerno, we find several factors which generate confidence in the reliability of the Lazzari testimony. (1) Lazzari had no bias or interest in the outcome. His testimony emanates from the Local 54 hearing, where he testified as an expert on organized crime amd related information which he obtained in the course of performing his official duties unrelated to this case. (2) The transcript of his testimony was available to the respondents prior to the hearing. (3) The respondents did not attempt to secure the appearance of Mr. Lazzari. (4) There was no evidence to contradict the information received from the informants, which formed the basis of Mr. Lazzari's testimony. (5) Mr. Lazzari's statements were not based on "idle gossip." See Zannino, supra, 531 F. 2d at 692. Nonetheless, the question

remains, whether information derived from reliable but undisclosed informants has sufficient underlying reliability and probative force to support a finding. The Fatico decisions, United States v. Fatico, 579 F.2d 707 (2 Cir. 1978) (hereafter Fatico I), United States v. Fatico, 603 F. 2d 1053 (2 Cir. 1979) (Fatico II), cert. den. 444 U.S. 1073 (1980), support the argument that reliance on such evidence is not misplaced, so long as it is subject to corroboration by other means.

In Fatico, a criminal case, the defendants entered a plea of guilty to conspiracy to possess a quantity of furs stolen in interstate commerce. At sentencing, defendants argued that the judge could not consider the testimony of an FBI agent relating information from a reliable but confidential informant that defendants were members of an organized crime syndicate. The narrow questions presented by the case were whether the evidence proffered by the government was sufficiently reliable to be used as a basis for imposing a harsher sentence and whether the defendants would be afforded an adequate opportunity to rebut the substance of the information. District Court Judge Weinstein answered both questions in the negative and ruled that reliance upon such evidence would violate the Due Process and

Confrontation Clauses of the Federal Constitution.[23]

The Court of Appeals reversed this determinaiton in Fatico I. In an opinion by Judge Oakes, the court held that neither the Confrontation nor the Due Process Clause is violated by the use in sentencing proceedings of information supplied by an unidentified informant where there is good cause for not disclosing his identity, and the information he furnishes is subject to corroboration by other means. Id. at 713-714. Judge Oakes concluded "that the trial court had erred in excluding the agent's testimony about the informer's declaration once the government represented that it would produce the specified corroboration." Id. at 713. The appeals court recognized that the government is effectively precluded from revealing the identities of informers because of past murders of those who implicated organized crime members. Id. at 710. Further, the court was satisfied with the evidence to corroborate the informant, which consisted of the testimony of two coconspirators who turned government's evidence in the trial and who were under the government witness protection program; the nature of the crime itself, viz. hijacking, which is often associated with organized crime; the testimony of law enforcement officers who observed the defendants consorting with members of the Gambino family;

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23. United States v. Fatico, 441 F. Supp. 1285 (E.D.N.Y. 1977).

and defendants' lengthy records dating back to the 1930's. Id. at 709-710, 713.

On remand, Judge Weinstein determined that: defendant's[24] membership in organized crime could enhance the sentencing penalty to be imposed upon him; the government had to prove such membership by "clear, unequivocal and convincing evidence;" the corroborating details offered by the government were adequate to support the declarations of the out-of-court informants to the effect that the defendant was a member of an organized crime family.

Judge Weinstein recognized that a substantial liberty interest is at stake in sentencing, but nevertheless reasoned that "it does not necessarily follow that all of the procedural safeguards and strict evidentiary limitations of the criminal trial are required." Id. at 401. Judge Weinstein found it highly probative that seven different government agents, four of them from the FBI, who relied on a total of seventeen independent informants, testified that Daniel Fatico was a member of the Gambino family. Judge Weinstein reasoned that: "[e]ven if one or several of these experienced agents miscalculated the reliability of an informant, the large number of agents and informants, greatly reduces the margin for error." Ibid. As to corroborating

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24. For reasons unclear and unimportant, after remand the case involved only one of the Fatico brothers.

details, Judge Weinstein found sufficiently probative only "the independent police observations of the defendant and his associates consorting with criminals." Ibid.[25] Thus, he concluded that the government's proof met the rigorous burden of "clear, unequivocal and convincing evidence," which he described as at least 80% probability that the defendant is an active member of an organized crime family. A second appeal was taken, this time by the defendant.

In Fatico II, supra, 603 F. 2d at 1053, the appeals court affirmed the decision of the district court, but did not adopt all of Judge Weinstein's rulings. Like Judge Weinstein, Judge Oakes highlighted the number of testifying law enforcement officers and the number of independent informants, whose statements were relied upon by the officers, as significant corroborative evidence. However, unlike the district court, Judge Oakes cited to additional corroboration for the out-of-court assertions of the undisclosed informants. He found it in the personal

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25. Judge Weinstein attached little or no probative value to the testimony of the two coconspirators, since these witnesses had extensive criminal records and long histories of association with organized crime, and because their testimony was equivocal. He also largely disregarded the testimony that the defendant attended a closed wake for a Gambino family member and the evidence of defendant's prior arrests on a variety of other charges.

observations of the law enforcement officers and the nature of the crime itself.[26] Id. at 1057.

The government's burden of proof was an important issue in Fatico and a significant point of distinction to this exclusion case. The Court of Appeals rejected the defendant appellant's contention that beyond a reasonable doubt was the appropriate standard. Without adopting the clear, unequivocal and convincing standard utilized by Judge Weinstein, the court observed that there was sufficient evidence under that standard to reach the finding that the defendant was a "made" member of the Gambino crime family. Ibid.

The most important feature of the Fatico decision is that, though the defendant was effectively denied the right to cross-examine the informants upon whom the officers' testimonies were based, the court nonetheless found sufficient corroboration to support the officers' testimonies. In Fatico the defendants had the opportunity to cross-examine the subject officers whereas in the instant proceeding, the respondents did not have the opportunity to cross-examine Lazzari. As in Fatico, however, it is unlikely that Lazzari's presence would have made any appreciable difference. In his Local 54 testimony , Mr. Lazzari chose

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26. Judge Oakes did not fault Judge Weinstein for disregarding the coconspirators' testimonies (see Fatico II, supra, n. 5 at 1055).

not to disclose the identity of his informants. It is highly unlikely that he would have done so if called to this proceeding. Moreover, we have no reason to doubt the credibility of Lazzari as a witness. In this case, the Lazzari testimony is corroborated by Salerno's recitation of Leonetti's loanshark activity, a crime often associated with organized crime; by the conclusion of the 1983 Pennsylvania Crime Commission Report, which states uequivocally that the respondents are members of an organized crime family, and by the inclusion of the respondents' names on Scarfo's telephone list.

Even assuming arguendo, however, that the government's proofs in Fatico were more substantial than exist here, more was understandably required in light of the substantial interest at stake, and the resultant burden of proof on the government. Sentencing is a critical stage in the criminal process, and the extent of deprivation of the defendant's freedom was at stake. Here, as we indicated earlier, the respondents' interest is the ability to enter the premises of the 11 casino hotels in Atlantic City. This interest is hardly of weighty constitutional significance. As stated by the Fatico court, "'And the more important the rights at stake the more important must be the procedural safeguards surrounding those rights.'" United States v. Fatico, supra, 458 F. Supp. at 403, quoting Speiser v. Randall, 357 U.S. 513 (1958). See also, Cafeteria and

Restaurant Workers v. McElroy, 367 U.S. 886, 895 (1961). As a respondent's interest diminishes, so does his right to every procedural device he may wish or desire.

Further, as noted, the applicable burden of proof on the government in Fatico was more demanding. This difference reflects "in large measure on society's assessment of the stakes involved in [the different] proceeding[s]." In re Winship, 397 U.S. 358, 370 (1970). In Fatico, both the district court and the appeals court found that there was sufficient evidence under the "clear, unequivocal and convincing standard." In the instant case, the burden of proof on the Division is by a preponderance of the evidence, which simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence." In re Winship, supra, 397 U.S. at 368. "Quantified, the preponderance standard would be 50+% probable." Fatico, supra, 458 F. Supp. at 403. These differing burdens obviously have a significant affect on the outcome of this case.

In sum, the division has presented the following evidence to substantiate its allegations: Lazzari's testimony that both Leonetti and Merlino are made members of an organized crime family; Salerno's testimony, particularly

that which concerned the usurious loan from Scarfo through Leonetti, and that which concerned Scarfo's association with Scarf, Inc., a corporation formed by Leonetti and Bancheri; Maher's testimony to the effect that his investigation supported Salerno's usury allegation; McGuigan's testimony that the respondents' names appeared on Scarfo's telephone list, particularly the fact that Merlino's name was encoded; Leonetti's and Merlino's pending indictments, and finally, the inference which may be drawn against Leonetti by virtue of his invocation of the Fifth Amendment when queried about the purportedly usurious loan to Salerno. In view of the relevant case law and applicable constitutional principles, we believe that this evidence possesses the degree of reliability legally necessary for this exclusion proceeding. Stated differently, this information can satisfy the standard of section 107(a)(6) as being the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The task now is to evaluate this material under each of the statutory bases for exclusion.

III. WHETHER THE DIVISION ESTABLISHED BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE THAT THE RESPONDENTS MEET THE CRITERIA FOR EXCLUSION.

CRITERIA FOR EXCLUSION

A. Respondent Leonetti

As to respondent Leonetti, the Division alleges that

he is a career offender, an associate of a career offender and a person whose presence in a licensed casino hotel would be inimical to the interests of the State of New Jersey, of licensed gaming therein, or both.

"Career or professional offender" as defined in N.J.A.C. 19:48-1.1 "means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state." It should be emphasized at the outset that the absence of serious convictions is not dispositive of the issue whether an individual may be deemed to be a career or professional offender. Indeed, a list of serious convictions is not a prerequisite to admission into the world of organized crime, though the existence thereof may be viewed as an identifying feature.

We find sufficient credible evidence in the testimonies of Salerno, Lazzari and Maher to justify the determination that the respondent is a career offender as defined by the Commission regulation. Gino Lazzari testified, and we find, that the respondent is a member of the crime family of La Cosa Nostra. Mr. Salerno and Agent James Maher testified, and we find, that the respondent engaged in loansharking, a crime often associated with organized crime. The subject testimonies, together, for reasons we have explained at some

length in the preceding portion of this opinion, have sufficient underlying reliability and probative force to support a finding that Mr. Leonetti is a career or professional offender. In addition, though we note that we would not predicate a finding solely on the Pennsylvania Crime Commission Report, this conclusion is also supported by the 1983 Report.

The Division alleges that Mr. Leonetti is a close associate of Nicodemo Scarfo, who is purported to be a career or professional offender. An association with a career offender may also be grounds for exclusion. See N.J.A.C. 19:48-1.3(a)(2).

Association with career offenders is a concept that also finds expression in other sections of the Act. See N.J.S.A. 5:12-86(f) and -89(b)(2) where it stands as a basis for disqualification of applicants for licensure or registration under the Act. Previous Commission decisions have established that not every relationship with career offenders or members of career offender cartels will be the basis for disqualification under the Act. In assessing the quality and importance of an association, a number of factors must be considered including,

> the time of the association, its duration, the purpose, its intensity, its attenuation through third parties, the character of the associate, the associate's reputation, the applicant's knowledge of such reputation or character, the applicant's exercise of

> reasonable efforts to determine the suitability of its associates, termination of the association and the reasons for termination. [In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1, at 10, 18 (Commission Decision 1979)].

Moreover, as to the question of whether the purported association is such that it renders the candidate's presence inimical to the interests of the State or licensed gaming, the Commission has stated with reference to disqualification under section 86(f) of the Act that:

> a continuing association with career offenders or other unsuitable persons might well be inimical to the Act or to legalized gaming where the nature and quality of the association would justly call into question the integrity of the regulatory process and of casino operations. Such a question would arise where the nature and quality of the relationship create a risk that the career offender might exercise some degree of influence or control over the association with regard to gaming operations or other business incidental to such operations. The danger of such indirect participation by career offenders or other unsuitable individuals cannot be tolerated. [Resorts, supra, at 18-19; see In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, ___ N.J. Super. ___ (decided July 11, 1985)].

We find sufficient credible evidence in the testimonies of Salerno and Maher to justify the finding that Mr. Leonetti is an associate of Mr. Scarfo "in such manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of the Act and to

gaming operations." Resorts, supra, at 18. Salerno testified, and we find, that Philip Leonetti loaned him $10,000 with money obtained from Scarfo and charged him interest of $250 a week. During the course of these proceedings, respondent was put to the constitutionally acceptable choice of whether to testify or to remain silent, and he elected not to defend himself against the Salerno accusations. Viewing the record as a whole, we find it appropriate to draw inferences from the respondent's failure to testify concerning this matter. Thus, we conclude that Philip Leonetti is an associate of Scarfo and has engaged with him in a criminal enterprise. In addition, though we note that we would not predicate a finding solely on the existence of Scarf, Inc. and its curious origin, its name does raise serious questions, and seemingly supports a conclusion of association. Scarf, Inc., a concrete contracting firm, is located at 28 North Georgia Avenue, the home of Scarfo. Mr. Leonetti named the corporation Scarf, Inc. We may draw from this that he wanted others to infer that Scarfo was the real boss. We feel justified under all the evidence here in drawing that inference. We note too the testimony of McGuigan that Leonetti's name, though not encoded, was on Scarfo's telephone list. Taken together with the other information before us, these facts further indicate that a close relationship, extending well beyond a mere

social or blood relationship, exists between Scarfo and Mr. Leonetti. Thus, we reject the ALJ's disposition of this issue in its entirety.

The Division alleges that the respondent is a person whose presence in a licensed casino would be inimical to the interest of the State of New Jersey or of licensed gaming therein. "Inimical" as defined in N.J.A.C. 19:48-1.1 "means adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act."

Here, the ALJ correctly observed that "it must be determined whether the public would be reasonably justified, based upon the totality of the information presented herein, in perceiving that casino gaming operations and the strict regulation thereof would be threatened by the presence of the respondents in a licensed casino hotel." A-19.

For the reasons which follow, the Commission agrees with the ALJ that the pending indictment against Mr. Leonetti is sufficient in and of itself to establish inimicality and warrant the respondent's continued placement on the list pending the outcome of the criminal proceedings. However, we reject the ALJ's assertion that, if the respondent is subsequently acquitted on the subject charges, "there is no cause for exclusion" (A-20). Moreover, we

reject the ALJ's finding that the indictment provides the sole basis for a finding of "inimicality."

On September 18, 1984, an indictment was filed in the United States District Court, District of New Jersey, charging Mr. Leonetti with two counts of extortion and one count of conspiracy to commit extortion contrary to 18 U.S.C. 1951 and 1952. The indictment charges Mr. Leonetti with being a leading associate of the "Scarfo Organization," and with responsibility for seeking to influence and control the government of Atlantic City, through corruption, for the profit of the crime cartel.

We wholeheartedly agree with the ALJ that "[i]f these charges are true, the inimicality of the respondent's presence in a casino hotel is established beyond all doubt... [since the charges are] so directly related to the public confidence and trust in the regulation of the casino industry... The mere existence of the charges [is] sufficient to warrant exclusion pending the outcome of the criminal proceedings"(A-20).

At the July 24, 1985, Commission meeting, the respondent advanced the argument that the indictment does not provide a basis for a finding of inimicality, because of the presumption of innocence and because the Casino Control Act does not provide for excluding a patron based on a pending indictment. A similar position is adopted by the dissent.

The principles enunciated in Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471 (1971), cert. den. 405 U.S. 1065 (1972), are controlling on the issue of the effect of a pending criminal indictment in a civil proceeding such as this. In Trap Rock, the Commissioner of Transportation suspended the ability of two contractors to bid on contracts to be awarded by the DOT on the basis that principals of the contractor companies were the subject of pending indictments for bribery. One of the arguments advanced by the respondents was that the Commissioner's action denied them due process because it was based solely on the indictments, without independent proof of the truth of the criminal charges. After taking care to note that the challenged proceeding did not involve a final order of debarment, but rather a suspension pending resolution of the criminal charges, the Court considered the significance and effect of the indictment:

> An indictment of course is not proof of its own allegations in the criminal trial itself....(citation omitted). In the trial, the indictment is the very charge to be made out, and it would deny the accused's right of confrontation to give the indictment any evidential value whatever. But this is not to say that an indictment is nothing at all, even within the criminal process. The indictment will suffice to warrant the arrest of the accused and to hold him to or even without bail. For an indictment, far from being a mere allegation, constitutes a finding by a grand jury that a basis exists for subjecting the accused to a trial, with the intermediate

> restraints upon his freedom we just mentioned.
>
> Under our practice the grand jury is instructed:
>
> *** After you have heard the evidence, you are to decide whether a prima facie case has been made out. This means whether the State has presented evidence, which if unexplained or uncontradicted, would carry the case to a jury and justify the conviction of the accused.
>
> . . . .
>
> An indictment, State or federal, is hardly a neutral fact for all purposes. In the area of our present concern, it cannot be said that an indictment has no meaning. On the contrary, the indictment means that a basis exists to believe the charge if the evidence on hand is not explained or contradicted. And if the charge against the contractor is true, his lack of responsibility is a present fact. A conviction thereafter will merely evidence that the disqualifying attribute did exist.
> [59 N.J. 487-488].

Applying these principles to this case, we find that the indictment constitutes an event which renders respondent Leonetti presently unsuitable and which, given the nature of the charges, makes his presence in the casino hotel inimical to the interests of the State and to legalized gaming.

Moreover, we do not believe, nor do we think anyone should assume that, in order to satisfy the indicia of inimicality under section 71, there must be an actual offense, i.e., conviction, a notion advanced by the dissent. This is not the case. Section 86(c)(4) of the Act establishes as a

disqualification for licensure or registration the commission of an offense which indicates that licensure or registration of that person could be inimical to the policy of the Act and to casino operations, N.J.S.A. 5:12-86(c)(4). While the existence of inimical "offenses" would be a relevant concern in an exclusion case, it is neither determinative nor essential to finding an inimical "presence." Rather, for exclusion purposes, the notion of inimical presence encompasses an evaluation of the conduct and background of the individual in order to determine whether under all the circumstances that person's presence either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming. As suggested by the ALJ, it is a "totality of information" approach. Indeed, to confine this Commission's consideration solely to offenses in determining inimicality under section 71(a) "would impose a myopic perspective on [our] responsibilities that could well warp [our] decisions." Cf. Keyes Martin & Co. v. Dir. Div. of Purchase, 99 N.J. 244, 260 (1985). It is therefore reasonable to find that the existence of criminal charges, which are manifestly inimical to the basic premises of the Act, is itself sufficient to warrant exclusion to preserve the public trust and

confidence during the pendency of the indictment.[27]

Further, as we indicated earlier, we reject the ALJ's view on the effect of respondent Leonetti's acquittal on the criminal charges should such an eventuality occur. Even if this indictment were the only basis for Leonetti's exclusion, we would not find an acquittal to establish definitely "no cause for exclusion." In a civil proceeding such as an exclusion hearing, facts are found by a preponderance of the credible evidence. In a criminal proceeding the same facts have to be established beyond a reasonable doubt. In United States v. One Assortment of 89 Firearms, ___ U.S. ___, 104 S. Ct. 1099, 1011 (1984), the United States Supreme Court found that the acquittal on a criminal charge requiring a higher standard of proof did not preclude the government from initiating a civil proceeding based on related charges. Similarly, in the instant case, if Mr. Leonetti is acquitted of the charges, the Division would be entitled to offer proof of the same charges by a preponderance of the evidence.

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27. It should be noted also that the pendency of a prosecution for an inimical offense is itself grounds for automatic denial or revocation of any license or registration. N.J.S.A. 5:12-86(d). While not dispositive here, this provision illustrates the Legislature's awareness and concern with both convictions and pending charges. There is no reason to read the "inimical presence" standard so narrowly as to exclude reference to ongoing prosecutions without regard to the gravity of the charges or their bearing on public trust in casino operations.

Apart from the indictment, we find that Mr. Leonetti's presence would otherwise be inimical to the interest of the State or licensed gaming therein. We refer again to the testimonies initially offered at the Local 54 hearing, most notably that of Salerno, Lazzari and Maher. Salerno's testimony, augmented by Maher's, to the effect that Leonetti engaged in loanshark activities links Leonetti to an offense often associated with both organized crime and illegal gaming. See Second Interim Report of the Staff Policy Group on Casino Gambling, (1977) at 1. This offense, occurring in Atlantic City, is the type of wrongdoing feared by the Act's drafters. Salerno's testimony also provides a basis to conclude that Leonetti's association with Nicodemo Scarfo is for purposes far more nefarious than any familial relationship may require. Lazzari's testimony even more explicitly ties Leonetti to organized crime as a "made member" of La Cosa Nostra. The Commission deems this evidence credible and probative and readily reaches an inimical presence finding based upon it.

B. Respondent Merlino

As to respondent Merlino, the Division makes essentially the same allegations concerning the criteria for exclusion as it did with Mr. Leonetti. We find sufficient credible evidence in the testimony of Gino Lazzari to

establish the career offender status of Mr. Merlino. Mr. Lazzari testified, and we find, that Mr. Merlino is a member of La Cosa Nostra. As with Leonetti, we note that, this conclusion is also supported by the 1983 Crime Commission report. In addition, this conclusion is supported by the testimony of agent Dennis McGuigan of the SCI who stated that he seized a photostatic copy of a telephone list from Scarfo in December 1979 following his arrest for the murder of Vincent Falcone, and that a duplicate of that list was later found in Scarfo's dresser drawer at 26 North Georgia Avenue. The list contained several encoded names and numbers related to associates of Scarfo who have been linked to organized criminal activity. Other names and numbers listed were not in code, such as dentists and attorneys. Included in the encoded list was Lawrence Merlino. Since Scarfo is under constant surveillance by the police, it may be inferred that he kept certain numbers in code because he did not want evidence of his association with these individuals to fall into the hands of the law enforcement authorities. Again, we would not predicate a finding solely on the phone list or the Crime Commission Report.

We find that the subject evidence, which was not contradicted by any evidence in these proceedings, possesses sufficient probative force to support a finding that Mr.

Merlino is a career or professional offender. Thus, we reject the ALJ's disposition of this issue.

The Division alleges that Mr. Merlino is a person whose presence in a licensed casino would be inimical to the to the interest of the State of New Jersey or of licensed gaming therein.

On July 22, 1985, an indictment was filed in the Superior Court of New Jersey, Law Division-Criminal, charging the respondent with one count of conspiracy and one count of hindering apprehension or prosecution. The indictment charges Mr. Merlino with conspiring to conceal a dead body in order to hinder the apprehension, prosecution and conviction of an as yet unidentified person for the crime of murder.

As with Leonetti, the Commission finds the pending indictment against respondent Merlino for a charge associated with the activities of professional criminals, sufficent to establish inimicality warranting the respondent's continued placement on the list. Apart from the indictment, we find that Mr. Merlino's presence would otherwise be inimical to the interest of the State or licensed gaming therein. We refer again to that portion of Lazzari's testimony where he identifies Merlino as a made member of La Cosa Nostra, the inclusion of Merlino's encoded name on Scarfo's telephone list and the conclusion of the Pennsylvania Crime Commission Report that Merlino is a member of La Cosa Nostra. We also

note Mr. Merlino's refusal to answer questions or provide information which would shed further light on his activities and associations.

CONCLUSION

For all the foregoing reasons, we find that the initial decision contains certain errors which need to be modified. The modifications which must be made are:

(1) To the extent that "competent evidence" represents the application of the residuum rule, rather than the standard established by N.J.S.A. 5:12-107(a)(6), the initial decision should be modified for the reasons stated in the Commission's first opinion in Merlino and Leonetti, supra;

(2) The ALJ's ruling that no adverse inferences can be drawn from a respondent's invocation of the Fifth Amendment right to silence because of a reasonable apprehension of prosecution should be rejected, again for the reason stated in Merlino and Leonetti, and

(3) The ALJ's ruling, that should Leonetti subsequently be acquitted of the charges contained in his pending indictment there is no cause for exclusion, should be rejected because it fails to take into consideration the differing burdens of proof and the possibility of exclusion proceedings after a criminal acquittal.

As to the merits, we would further modify the initial decision to find:

(1) Respondent Leonetti is a career criminal offender;

(2) Mr. Leonetti is an associate of Nicodemo Scarfo in such manner as to make his presence in a casino hotel inimical to legitimate casino gaming;

(3) Based upon the pending indictment for alleged offenses which are adverse to the policies of the Casino Control Act, respondent Leonetti's presence in a licensed casino would be inimical to legitimate gaming therein.

(4) Even apart from his pending indictment, respondent Leonetti's presence in a licensed casino would otherwise be inimical to legitimate gaming;

(5) Respondent Merlino is a career criminal offender, and

(6) Based upon the pending indictment for an alleged offense which is adverse to the policies of the Casino Control Act, respondent Merlino's presence in a licensed casino is inimical to legitimate gaming.

(7) Even apart from his pending indictment, respondent

Merlino's presence in a licensed casino would be otherwise inimical to legitimate gaming.

NEW JERSEY CASINO CONTROL COMMISSION

WALTER N. READ, Chairman

CARL ZEITZ

E. KENNETH BURDGE

Dated: November 18, 1985

DISSENTING OPINION OF

COMMISSIONER VALERIE H. ARMSTRONG

I have the utmost respect for the powers and duties of the Division of Gaming Enforcement (Division) as enunciated in Section 76 of the Casino Control Act. I fully accept and acknowledge the need for pervasive regulation of the casino industry and the preservation of the public confidence and trust in the credibility and integrity of the regulatory process -- public policy demands it. However, public policy also demands that the regulatory process employ certain rules, procedures and evidential standards which preserve the basic elements of fundamental fairness and due process, while at the same time accommodating the need for strict regulation. Our regulatory system was designed to statutorily permit the relaxation of traditional, judicial evidential standards (see N.J.S.A. 5:12-107a(6)), presumably for the purpose of aiding the regulatory process to insure that integrity prevails and that unsound, unfair and illegal practices do not occur, and that certain persons of bad character (including career or professional offenders and their associates) are precluded from even entering a licensed casino facility.

This case has me angry and disillusioned. Notwithstanding the existence of Section 107a(6), the Division has inexcusably failed to meet its burden of proof by the preponderance of the evidence. This Commission has been asked to accept evidence which in toto is woefully inadequate, notwithstanding the introduction into evidence of 113 documentary exhibits. Not one

piece of direct, competent evidence was presented at the two hearings held by the Office of Administrative Law (OAL), which justifies the placement of the respondents' names on the exclusion list. If Leonetti and Merlino constitute the danger and threat to licensed gaming that the Division alleges they do, then clearly their names should be placed permanently on the list. If ever an exclusion case should have been pursued vigorously and supported with the best quality proofs available, this is the case.

After listening to oral argument on the Initial Decision on July 24, 1985, I made every attempt to fully appreciate the Division's position that the quantity of the evidence presented warranted permanent placement of these names on the list. I have read the transcripts of both of the OAL hearings and I have examined many of the 113 exhibits. The quality of the evidence is thin and anemic. If we accept the level of proof submitted in this case as being sufficient for placement of names on the exclusion list, we will be asked to do so again in the future--and that future case may not involve individuals as infamous and notorious as Leonetti and Merlino. (The record clearly establishes that respondents have been the subject of many newspaper articles alleging that they are members of organized crime.) Do we wish to now set a precedent which will require us to accept such paltry proofs in other exclusion cases which may involve "Mr. Smith and Mr. Jones" rather than Messrs. Leonetti and Merlino? The quality of proofs acceptable to place

a name on the exclusion list must be consistent from case to case. Consistency and uniformity are essential elements in maintaining the integrity of our regulatory system.

I find it inexplicable why the Division failed to call any witnesses (other than Leonetti and Merlino), particularly after the matter was remanded to the OAL for a new hearing. Every opportunity was available at the time of remand to reevaluate the record and to cure any evidential deficiencies.

I am particularly disturbed that we are asked to rely upon testimonies of Gino Lazzari of the Pennsylvania Crime Commission, James Maher of the Federal Bureau of Investigation, Dennis McGuigan of the State Commission of Investigation and an employee of the Atlantic County Prosecutor's Office, which testimonies were given at this Commission's Local 54 hearing in 1982. At the Local 54 hearing, Leonetti and Merlino who were called as witnesses, were limited by the Commission to legal representation only for the purpose of rendering advice as to their Fifth Amendment right to silence. They were precluded from having any right to cross-examination. I find it puzzling that the Division apparently made no attempt to have any of these law-enforcement

witnesses testify during this proceeding.[1] The zeal with which law enforcement agencies pursue investigation of alleged organized crime members and testify before various State and Federal Commissions as to organized crime activities, can only lead to the logical inference that such law enforcement officers would be more than ready and willing to testify at a proceeding designed to exclude two alleged organized crime figures from entering Atlantic City casinos.

I place no faith in the testimony of Joseph Salerno, which was also given before this Commission during the Local 54 hearing. It is significant that Mr. Salerno's testimony in another matter, i.e., the Falcone murder trial during which Leonetti and Merlino were acquitted, was rejected by a jury. Absent the opportunity for the administrative law judge to assess the credibility of Salerno testifying first hand, and absent the opportunity for Salerno to be cross-examined by respondents' attorneys in this proceeding, and the fact that a jury rejected

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[1] Also of at least minimal significance is the fact that only two of the five current members of this Commission were members of the Commission during the Local 54 hearings. It is one thing to accept the legal principles and conclusions rendered in a final decision by this Commission as having precedential value in future cases; however, it is altogether different to be asked to render factual findings from prior testimony (of witnesses presumably available to testify in this proceeding) given before the Commission during a proceeding in which respondents' participation did not include the right to cross-examine and during which three of the current members of the Commission had no opportunity to evaluate the credibility of the witnesses, or to question the witnesses.

his testimony in another matter, it cannot reasonably be concluded that the prior testimony given by Salerno in another proceeding and which has been introduced into this record possesses any degree of reliability.

I also find it distressing that we are asked to rely upon excerpts from four Pennsylvania Crime Commission reports without any testimony as to the purpose of the Crime Commission, how it gathers its information and how that information-gathering process is applied to the conclusions which are set forth in the reports. For example, what weight is this Commission to give to the following comment extracted from the 1980 Pennsylvania Crime Commission report which was introduced into evidence?

> Another reason that Atlantic City affects Pennsylvania is that a Philadelphia crime family has "traditionally" controlled Atlantic City. There are some who say that Angelo Bruno's death was somehow linked to his "allowing" competing crime families to enter the market in Atlantic City. Others say that Bruno was killed so the resort could be carved up, without his interference, by other crime organizations. It may be years before the truth is known (emphasis added).

It is important to keep in mind that the burden of proof in this matter is upon the Division by the preponderance of the evidence. This is not a licensing case in which the burden of proof is upon an individual to prove his qualifications by clear and convincing evidence. Unless the Division has presented a prima facie case, there is no legal obligation for respondents to come forward and rebut the evidence presented. (Had this

involved a licensing revocation matter, respondents would have had to affirmatively prove their qualifications as a prerequisite to licensure, which most likely would have included an attempt to contradict the allegations placed upon the record by the Division).

Furthermore, in assessing whether the Division has met its burden of proof, the question has arisen as to whether Section 107a(6) or the Residuum Rule found at N.J.A.C.1:1-15.8 applies to this proceeding. There is no question but that if the Residuum Rule applied, the Division's proofs would clearly fail, since the Residuum Rule requires some legally competent evidence to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

On the other hand, if Section 107a(6) is the applicable evidentiary standard, the question arises as to the proper interpretation of Section 107a(6), and whether that statutory provision is incompatible with the Residuum Rule and New Jersey case law. Section 107a(6) is consistent with other portions of the Casino Control Act which establish legal procedures designed to accommodate the protection of the public through strict regulation of the gaming industry; for example, Section 79 of the Act, which permits the Division to conduct certain inspections, searches and seizures without notice and warrant which, but for the strict regulatory process involved in this industry, might not otherwise be tolerated.

I am aware of the Commission's prior ruling involving Section 107a(6) in Alter v. Division of Gaming Enforcement, 6 N.J. A.R. 584 (1979) and the Commission's Order of Remand dated May 25, 1984, in the instant matter, in which the Commission stated that "...Section 107a(6) refers specifically to the kind of evidence that may be introduced and the kind of evidence that is sufficient to base ultimate factual findings in all proceedings pursuant to the Casino Control Act", and thus finding that the Residuum Rule is inapplicable to Commission proceedings, whether these proceedings are held before the Commission or an Administrative Law Judge. I respectfully disagree with that interpretation of Section 107a(6).

Section 107a(6) and the Residuum Rule both permit the admission of hearsay evidence. Section 107a(6) provides that the evidence shall be admissible "...regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action..." The Residuum Rule requires an "ultimate finding of fact" to be supported by some "legally competent evidence", notwithstanding the admissibility of hearsay evidence. Section 107a(6) simply states that hearsay evidence (so long as it is relevant) "...shall be sufficient in itself to support a finding (emphasis added) if it is the sort of evidence upon which responsible

persons are accustomed to rely in the conduct of serious affairs..." The distinction between the use of the terms "finding" and "ultimate finding" is significant. It is inconceivable that had the legislature intended to override the Residuum Rule and New Jersey case law (cited hereinafter) which requires an administrative decision to be supported by a residuum of legal and competent evidence, that Section 107a(6) would not clearly state that the ultimate determination in a case may be supported solely by hearsay evidence. Rather, the statute merely permits individual findings to be supported by reliable hearsay evidence. As with other sections of the Act, Section 107a(6) must be interpreted to accommodate the strict regulatory process while at the same time preserving an acceptable degree of fundamental fairness. The language of Section 107a(6) which expressly permits a deviation from the "common law or statutory rule" relates to the admissibility of evidence.

While Section 107a(6) clearly permits factual findings to be made upon reliable hearsay evidence, it clearly cannot be relied upon as the basis for every factual finding in a case up to and including the ultimate determination in the case. Specifically, for example, we cannot make an ultimate determination that either of the respondents are career offenders, based totally on hearsay evidence. To accept that standard of proof would belie the basic tenets of fundamental fairness and due process which a New Jersey litigant is entitled to receive.

More than a hint of this very same reasoning is found in the case of In Re Boardwalk Regency Casino License Application, 180 N.J.Super, 324, 350 (App. Div. 1981), mod. 90 N.J. 361 (1982); app. dis. 103 S.Ct.562 (1962), wherein the court stated

> "... the corporations argue that the evidence supporting the Commission's findings that Malnik was a person of unsuitable character, was 'irrelevant, inadmissible and legally insufficient.' The argument is entirely frivolous. The protesting brief points out the relevance of 'what the Perlmans knew about Malnik between 1971 and 1975.' N.J.S.A. 107a(6) takes care of the balance. See also N.J.A.C. 19:42-2.6. In Re Toth, 175 N.J.Super. 254 (App.Div.1980), cited by appellants as of no avail to them. In the matter before us, there was an ample residuum of legal and competent evidence to sustain the administrative decision (emphasis added). Weston v. State, 60 N.J. 36, 51 (1972)."

The court clearly addressed all three objections posed by the corporations by dealing with the issue of (1) irrelevancy (through citing portions of the protesting brief, which apparently dealt with that issue), (2) inadmissibility (through referring to Section 107a(6) of the Act) and, most importantly, the question of (3) legal sufficiency (through finding an ample residuum of legal and competent evidence to sustain the administrative decision).

It is clear that Section 107a(6) must be read compatibly with the Residuum Rule and the relevant case law. In Re Toth, 175 N.J.Super. 254, 262 (App.Div.1980) specifically held that "...the rule in this State is that a fact-finding or legal determination cannot be based on hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. However, 'for a court to sustain an administrative decision,

which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it'...Citing Weston v. State, supra." While In Re Toth did not involve a Casino Control Commission proceeding (although the case did involve the dissemination of a confidential investigative report on the Chairman of the Casino Control Commission), the case emphasized the need for fundamental fairness to prevail during all New Jersey administrative proceedings involving a substantial right. There is no rational basis, including the need for strict regulation, to totally exclude Casino Control Commission proceedings from the holding of Toth by interpreting Section 107a(6) so broadly and liberally to find that there need not be even a hint of legal and competent evidence in a record to support an ultimate determination.

Briefly, it cannot be reasonably argued that preventing entry into a public facility, including a licensed casino facility, does not involve a substantial right. In the case of Uston v. Resorts International Hotel, Inc., 89 N.J. 163 (1982), the Court discussed the evolution of the law concerning when a property owner of a general public facility may exclude a person from the premises, with the court concluding that a property owner has no right to exclude people unreasonably, and further, the property owner has a duty to not act arbitrarily or discriminatorily toward persons who come onto their premises. While the state clearly has an interest in excluding certain undesirable persons from patronizing licensed casino facilities, exclusion may not take place in a summary fashion. Section 71 of the Act and the regulations promulgated thereunder, (N.J.A.C.

19:48-1.1 et seq.) reveal that an exclusion proceeding is a serious matter in which an individual has a statutory right to an expedited hearing before being permanently barred from a casino facility.

The application of Section 107a(6) and the Residuum Rule to Casino Control Commission proceedings requires an intelligent balancing and evaluation of all of the evidence presented, to insure that while reliable and relevant hearsay evidence in itself may support a finding, the ultimate determination in a case may not be supported by a record consisting only of hearsay evidence. In applying this interpretation of Section 107a(6), it is apparent that the Division has not sustained its burden of proof since there is not one shred of legal and competent evidence to support the ultimate determinations which the Division has asked the Commission to reach. Even assuming, arguendo, that Section 107a(6) was interpreted to permit the ultimate determination in this case to be established by a record consisting solely of hearsay evidence, the Division's proofs are still inadequate. The language of Section 107a(6) (under any interpretation) does not permit an "anything goes" evidential standard. To rely upon newspaper articles, pictures of persons attending a funeral, and testimonies of persons from other proceedings during which the respondents had no right of cross-examination is not, in my opinion, the kind of evidence upon which a responsible person in the conduct of serious affairs would rely in making factual findings.

The cases cited by the majority to support its conclusion that the principal evidence submitted by the Division is sufficiently reliable are clearly distinguishable from this case. In United States v. Fatico, 599 F.2d 1053 (2 Cir. 1979), cert. den. 444 U.S. 1073 (1980), the defendants at least had the opportunity to cross-examine the law enforcement officers who testified as to information provided to them by from undisclosed informants. In Richardson v. Perales, 402 U.S. 387 (1971), the medical reports which the claimant (who had the burden of proof) alleged consisted of objectionable hearsay, were detailed and the information contained in the reports was derived from the physicians' personal consultations and examinations of the claimant. The court also noted that medical reports have been admitted into formal trials as an exception to the hearsay rule. Additionally, the claimant had the opportunity to cross-examine a doctor who was called by the hearing examiner as an independent "medical advisor" who explained the written reports.

The administrative law judge concluded that Leonetti's indictment was sufficient in itself to place Leonetti's name upon the exclusion list, pending the outcome of the indictment, because that indictment would render Leonetti's presence in a licensed casino facility "inimical" to the interest of the State of New Jersey or licensed gaming. While I concede that an indictment might be sufficient under certain circumstances, to place one's name preliminarily on the exclusion list, pursuant to

the "reasonable possibility" standard set forth in N.J.A.C. 19:48-1.5(a),[2] it does not necessarily follow that the name should remain permanently on the list after a plenary hearing has been held.

The case of Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471 (1971) has been cited for the proposition that Leonetti's name (and now Merlino's name) should remain on the exclusion list pending the outcome of the indictments since respondents chose not to refute the charges set forth in the indictment. In Trap Rock, the Commissioner of Transportation suspended Trap Rock's classifications for bidding on a state contract due to indictments running against the President and Chairman of the Board of Directors of Trap Rock. In that case, a state statute provided that prospective bidders had to establish their qualifications prior to bidding on the contract, noting at page 481, that it "...is settled that the legislative mandate that a bidder be 'responsible' embraces moral integrity just as surely as it embraces a capacity to supply labor and materials."

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[2] Presumably there must be some nexus between the offenses charged in the indictment and licensed gaming, which would indicate that the charges in the indictment might pose a threat to the public confidence and trust in the credibility, integrity and stability of casino gaming operations, e.g., an indictment for laundering money in a casino, or assaulting casino patrons, or cheating or swindling at a casino game, etc.

Trap Rock is distinguishable from the present case, insofar as Trap Rock involved a statute which required prospective bidders to establish their qualifications as a prerequisite to bidding on a state contract, and further, case law was well established that a bidder on a state contract must possess moral integrity. The court found that the indictment was prima facie evidence to believe that the contractor was unfit for the job. The Court stated that the alternatives available were to either suspend the classification pending the outcome of the criminal charge, or have an immediate trial conducted by the agency (Department of Transportation) of those charges. After concluding that a requirement that the agency try the criminal charges was inappropriate, the court found that the remaining alternative was to immediately suspend the contractor's classification, and permit him an opportunity to come forward to demonstrate why "...it would not disserve the public interest to contract with him notwithstanding the grand jury's finding of a prima facie basis for the disabling criminal charge." Trap Rock, supra, at 489. In an exclusion case, there is no requirement that a patron prove that he is "qualified" or that he possess moral integrity before being permitted to enter a licensed casino premises. In Trap Rock, however, the burden was upon the contractor to demonstrate that he was qualified to do business with the state, before a bid would be awarded to him. The facts in Trap Rock are clearly distinguishable from this exclusion case. The ultimate issues are not the same.

Section 71 of the Act does not specifically require the exclusion of a person under indictment. Rather, the Act and regulations promulgated thereunder, require the exclusion of persons who have been convicted of certain criminal offenses and whose presence in a licensed casino establishment would in the opinion of the Commission, be inimical to the interests of the State of New Jersey or of licensed gaming therein. The regulations further provide that a person may be excluded from the casino establishment if "...his presence would be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked." N.J.A.C. 19:48-1.3(a)4.

Section 71 of the Act charges the Commission with the responsibility of promulgating regulations which define the standards for exclusion. The regulations promulgated thereto are totally silent as to the exclusion of an individual who has been charged with or indicted for a criminal offense. Yet by the same token, the Casino Control Act addresses the significance of pending criminal charges by providing that pending criminal charges may be sufficient to deny, revoke or suspend an individual's casino license. See Sections 86d, 86g and 109a(1). Again, I reiterate that this matter is not a license proceeding.

The Trap Rock case is further distinguishable in that the Court found that to require the agency to try the criminal charges pending against the Trap Rock President and Chairman of the Board would not be appropriate, while the Casino Control Act, at least as far as the licensing process is concerned, provides in Section 86d (as incorporated into other sections of the Act) that a license may be revoked or denied after an administrative hearing on the criminal charges as they pertain to licensure requirements, notwithstanding that the criminal charges may still be pending. Pursuant to Section 86d, a licensee is also permitted the option of deferring the administrative hearing until the criminal charges have been disposed of. While the Casino Control Act does not specifically provide for a deferral of a hearing for a person whose name has been preliminarily placed upon the exclusion list, presumably, such a request could be granted pursuant to Section 71g of the Act, which provides "Upon receipt of a demand for a hearing, the Commission shall set a time and place for such hearing. Unless otherwise agreed by the Commission and the named person, such hearing shall not be later than 30 days after the receipt of a demand for such hearing." To leave the respondents' names on the list, pending the outcome of the criminal proceedings is tantamount to a deferral which this Commission has no authority to effectuate

without the consent of the individual respondents. Further, the fact that respondents did not request such a deferral should have no bearing on the outcome of this proceeding and does not require them to in any way rebut the charges set forth in the indictment, because the Division maintains the burden of proof in this matter. The holdings in Trap Rock do not apply since there is no requirement that a patron initially prove that he is "qualified" to enter a casino.

The Division presented no evidence as to the circumstances giving rise to the indictments sufficient to support a finding of inimicality. "Inimicality" was clearly defined by the Commission in In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) as follows:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is 'inimical' to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all circumstances, indicate what participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

While the charges set forth in the indictment are not meaningless, they do not constitute an actual offense, until such time that the state has proven in a criminal proceeding beyond a reasonable doubt that the offenses have been committed (a conviction). In this case, the Act would only require the Division to prove the charges by a preponderance of the evidence. It admittedly provided no evidence that respondents committed the offenses set forth in the indictments. The indictments indisputably accuse respondents of serious criminal charges which if proven in a criminal proceeding might certainly warrant the Division seeking another order of exclusion. Obviously, whether a conviction of any of the charges set forth in the indictments is "inimical to the interest of the State of New Jersey or of licensed gaming" (as defined in N.J.A.C. 19:48-1.1), would have to be determined based upon all of the evidence (including the convictions) presented at a new hearing. However, absent statutory or regulatory authority requiring exclusion based solely on an indictment, and since the burden of proof in exclusion cases is upon the Division, failure to provide some additional evidence to satisfy the indicia of inimicality set forth in the Resorts case, when combined with the presumption of innocence pursuant to N.J.S.A. 2C:1-13(a), precludes a finding of inimicality.

The public policy statement found at N.J.S.A. 5:12-1b(7) requires the exclusion from participation in casino gaming of "...persons with known criminal records, habits or associations...". An indictment, absent a conviction, does not

constitute a "known criminal record". An indictment does not, in and of itself, establish a criminal "habit" or "association".

Finally, I agree with the administrative law judge's determination not to draw adverse inferences from respondent's proper assertion of their Fifth Amendment right to remain silent. While I agree with this Commission's majority opinion that adverse inferences may be drawn in civil proceedings, the lack of sufficient evidence presented by the 113 documentary exhibits introduced into the record when combined with the limited number of questions asked of the respondents at the first OAL hearing cannot give rise to any adverse inferences. Quite frankly put, the right questions were not asked.

I would, therefore, conclude that the record in this matter provides us with insufficient evidence to permanently place either of the respondents' names on the exclusion list.

VALERIE H. ARMSTRONG,
COMMISSIONER

DATE: September 5, 1985

I hereby concur with this dissenting opinion.

JOEL R. JACOBSON
COMMISSIONER.

DATE: Sept. 5, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-152
OAL DOCKET NO. CCC 737-85
LICENSE NO. 27061-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	FINAL ORDER
v.		
SAMUEL A. MOFFA, III,		
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of July 31, 1985,

IT IS on this 5th day of SEPTEMBER 1985, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon the Samuel A. Moffa, III and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 737-85
AGENCY DKT. NO. 82-152

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
SAMUEL A. MOFFA III,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Samuel A. Moffa III, respondent, pro se

Record Closed: May 3, 1985 Decided: June 17, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on October 14, 1982, seeking judgment revoking the respondent's casino employee license, or some other appropriate sanction, based upon the respondent's arrest on September 20, 1982, for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 89 and 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the Act.

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2. Whether the respondent has committed an offense which is an enumerated disqualifier from licensure, or which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(1), (4) and 86g of the Act, thereby requiring revocation of licensure, or some other sanction, pursuant to section 129 of the Act.

3. Whether the respondent, notwithstanding any conduct which may constitute a disqualifying offense under section 86c of the Act, has affirmatively demonstrated his rehabilitation, within the meaning of section 90h, so as to avoid revocation of licensure, or some other sanction, pursuant to section 129 of the Act.

PROCEDURAL HISTORY

By order dated November 17, 1982, the Casino Control Commission entered a prehearing suspension of the respondent's casino employee license. By order of February 5, 1985, the Commission vacated the previously entered suspension and the matter was thereafter transmitted to the Office of Administrative Law on February 8, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 13, 1985, and the hearing was held on May 3, 1985.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 24-year-old resident of Hammonton, New Jersey. On May 21, 1981, he was issued casino employee license number 27061-21. On January 28, 1981, the respondent began employment as a mailroom clerk at the Harrah's Marina Hotel and Casino in Atlantic City, New Jersey.

One of the responsibilities of the Harrah's mail clerks was to deliver packages to Lamberts Jewelers, a shop located on the casino hotel premises. On April 17, 1982, the respondent was alone in the mailroom when he put a hole in the bottom of a package to be delivered to Lamberts Jewelers and he removed six, fourteen-karat yellow-gold charms having a value of $1,119 (exhibit P-3). The respondent repaired the package and it was subsequently delivered to the jewelry store. The theft was discovered on April 20, 1982, at which time it was reported to an investigator by the Postal Inspection Service (exhibit P-1).

On August 20, 1982, Postal Inspector Edward Moffit informed the New Jersey State Police assigned to the Division of Gaming Enforcement that latent fingerprints discovered on the package in question were identified as being those of the respondent (exhibit P-2). On the same day, the respondent was interviewed in the Division of Gaming Enforcement office at Harrah's. He denied having any knowledge of the missing jewelry and he agreed to undergo a polygraph examination.

On September 20, 1982, following the polygraph examination, the respondent admitted to his theft of the six gold charms, and he was arrested for theft by unlawful taking, in violation of N.J.S.A. 2C:20-3 (exhibit P-3). The respondent had been keeping the jewelry in his home and he turned over the gold charms to the State Police that same day.

On December 7, 1982, the respondent was indicted for theft by unlawful taking of goods valued at more than $500, contrary to N.J.S.A. 2C:20-3 (exhibit R-1). The respondent was subsequently admitted into the Pretrial Intervention Program and was ordered to perform 50 hours of community service. Upon his arrest, the respondent had been terminated by Harrah's and another condition for his completion of the Pretrial Intervention Program was that he maintained employment. From September 1982 until September 1983, the respondent was employed by a medical supply company. Since November 1984, the respondent has been employed as kitchen help by a restaurant in Hammonton. His community service was performed at Showmakers Theater Guild where he helped to build stage sets and to produce shows. The respondent also met with his probation officer once a week for three months. On July 15, 1983, it was determined that the respondent had satisfactorily complied with the conditions of the Pretrial Intervention Program and the indictment against him was dismissed (exhibit R-1).

CONCLUSIONS OF LAW

Pursuant to section 1d(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license.

Pursuant to sections 86c, 90e and 129 of the Act, the Commission may revoke, suspend, limit, or otherwise restrict licensure of any person who has committed or been convicted of acts constituting an offense which would render licensure inimical to the policy of the Casino Control Act and to casino operations, or who has committed or has been convicted of an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, pursuant to section 86g of the Act. It is undisputed that the respondent took property valued in excess of $500 from a package which he was to deliver to a jewelry store located in Harrah's Casino Hotel. This offense constitutes theft by unlawful taking of property valued in excess of $500, contrary to N.J.S.A. 2C:20-3, which is a crime of the third degree. This offense is a specifically enumerated disqualifier from licensure, pursuant to section 86c(1) of the Casino Control Act, even though the conduct was not prosecuted under the criminal laws of New Jersey, pursuant to section 86g of the Act. Therefore, I **CONCLUDE** that the respondent's commission of theft by unlawful taking permits the revocation, suspension or limitation of his licensure, pursuant to sections 86c, 90e and 129 of the Casino Control Act.

Nevertheless, pursuant to section 90h of the Act, licensure shall not be revoked on the basis of the commission of an offense enumerated in the Act as a disqualifying offense, provided that the licensee has affirmatively demonstrated his rehabilitation, with due consideration given to the rehabilitation factors set forth in that section. The respondent was not quite 21 years old when he committed the offense of theft by unlawful taking. Although he was a licensed casino employee, his duties did not involve work on the casino floor. While employed as a mailroom clerk, the respondent committed a theft involving a package entrusted to his care. While this is a

serious offense and the conduct adversely impacts upon his establishment of his good character, honesty and integrity, it appears that it was an aberrational event, the recurrence of which is extremely unlikely.

The respondent has matured since his lapse in good judgment that resulted in the criminal offense. He satisfactorily completed the terms of his Pretrial Intervention Program, including 50 hours of community service. There is no evidence in the record that the respondent has been involved in any further criminal conduct during the three years which have passed since his commission of the offense of unlawful taking. In addition, the credible evidence in the record suggests that the respondent presently enjoys a reputation for good character, honesty and integrity.

Based upon the foregoing discussion and the applicable law, I further **CONCLUDE** that the respondent has affirmatively demonstrated his rehabilitation, within the meaning of section 90h, so as to avoid revocation of registration, or any other sanction, pursuant to sections 90e and 129 of the Act. Finally, I **CONCLUDE** that the respondent has established his good character, honesty and integrity, within the meaning of sections 89 and 90 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Samuel M. Moffa III be and hereby is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 17, 1985
DATE

Joseph F. Fidler, s
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 18, 1985
DATE

Bernadette P. Fruge
CASINO CONTROL COMMISSION

Mailed to Parties:

June 21, 1985
DATE

Ronald L. Parker, K.S.
OFFICE OF ADMINISTRATIVE LAW

ij

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Postal Service Crime Lab Report
P-2 New Jersey State Police Investigation Report
P-3 New Jersey State Police Arrest Report

FOR THE RESPONDENT:

R-1 Indictment and Order of Dismissal
R-2 Letter of Reference, dated April 20, 1985

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Samuel A. Moffa III
James M. Austin
Shawn Dougherty

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-223
OAL DOCKET NO. CCC 322-85
APPLICATION NO. 49399-21
REGISTRATION NO. 53343-40

APPLICATION OF KEVIN F. MONAGHAN
FOR A CASINO EMPLOYEE LICENSE

AMENDED
FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission), recommending that the application of Kevin F. Monaghan for a casino employee license be denied; and no exceptions or objections having been filed thereto; and Kevin F. Monaghan having registered as a casino hotel employee on June 1, 1984, prior to final action on the initial decision by the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 24, 1985,

IT IS on this 15th day of AUGUST 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter is affirmed; and

IT IS FURTHER ORDERED that the application of Kevin F. Monaghan is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Kevin F. Monaghan is prohibited from reapplying for or obtaining any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Kevin F. Monaghan from retaining his casino hotel employee registration; ;and

IT IS FURTHER ORDERED that this final order supersedes the final order in this matter dated July 29, 1985; and

IT IS FURTHER ORDERED that copies of the final order be served upon Kevin F. Monaghan, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 322-85

AGENCY DKT. NO. 84-EA-223

KEVIN F. MONAGHAN,

Petitioner,

v.

DIVISION OF GAMING ENFORCMENT,

Respondent.

Kevin F. Monaghan, petitioner, pro se

Frances L. Sundheim, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 29, 1985 Decided: June 13, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Kevin F. Monaghan to the Casino Control Commission for licensure as a casino employee, permitting him to be employed as a casino security employee. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issues to be resolved in this matter are as follows:

1. Whether the petitioner, with specific reference to his record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of sections 86b and 90e of the Casino Control Act.

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2. With specific reference to his record of arrests, whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act, as incorporated in section 90b of the Act.

PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated November 5, 1984, the Division of Gaming Enforcement interposed its objection to the licensure of the petitioner. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on January 18, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 32-year-old resident of Williamstown, New Jersey. The petitioner holds a casino hotel employee registration, and for about one year, he was employed at the Claridge Casino Hotel in Atlantic City, New Jersey, as a supervisor of employees in the uniform department. The petitioner voluntarily left this employment in April 1985, and he is now employed by a company which monitors traffic volume to assess the suitability of various locations for business development.

The petitioner has an arrest and conviction record which was only partially disclosed on his Personal History Disclosure Form filed with the Casino Control Commission on October 12, 1983 (exhibit R-6). It is undisputed that the petitioner was charged on September 28, 1972, with possession of marijuana, contrary to N.J.S.A. 24:21-20a(4), and possession of an alcoholic beverage, contrary to N.J.S.A. 2A:170-54.1. The petitioner was found not guilty on the alcoholic beverage charge and was found guilty of possession of marijuana, for which conviction he was placed on probation for a period of six months (exhibit R-1). This conviction on October 4, 1972, in the Municipal Court of the Township of Winslow was not disclosed on the petitioner's Personal History Disclosure Form.

The petitioner was again arrested in May 1973 and charged with possession of marijuana, contrary to N.J.S.A. 24:21-20a(3). On June 26, 1973, the petitioner was found guilty in the Gloucester Township Municipal Court, and he was fined $250, plus $25 costs

(exhibit R-3). The petitioner disclosed this arrest and conviction on his Personal History Disclosure Form.

On August 13, 1977, the petitioner was charged with resisting arrest. According to the petitioner, he was riding his motorcycle when he was stopped by a police officer from Monroe Township who had given him a summons for a moving violation the previous day. This time, the officer wrote a total of 13 traffic summonses. The petitioner was wearing his helmet and apparently did not understand something the officer said to him. When the petitioner drove away, the officer pursued him and charged him with resisting arrest. The petitioner was found guilty of this offense on May 15, 1979, and he was fined $15, plus $10 court costs (exhibit R-2). The petitioner did not disclose this arrest and conviction on his Personal History Disclosure Form.

On October 2, 1978, the petitioner was charged with possession of marijuana under 25 grams, in violation of N.J.S.A. 24:21-20a(4). He was found not guilty in the Monroe Township Municipal Court on January 30, 1979 (exhibit R-2). The petitioner failed to disclose this charge on his Personal History Disclosure Form.

On June 21, 1983, the petitioner was charged by his wife with harrassment and assault and battery, in violation of N.J.S.A. 2C:33-4 and N.J.S.A. 2C:12-1. The petitioner appeared in the Monroe Township Municipal Court on August 30, 1983, and these charges against him were dismissed (exhibit R-4). According to the petitioner, his wife dropped the charges and they have remained married. The petitioner did not disclose these charges on his Personal History Disclosure Form.

On May 5, 1984, the petitioner was charged with trespassing, in violation of N.J.S.A. 2C:18-3. This alleged offense involved illegal fishing on the property of a private association. On July 31, 1984, the charge against the petitioner was dismissed (exhibit R-5). This charge occurred after the petitioner had filed his Personal History Disclosure Form with the Casino Control Commission on October 12, 1983.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns the reason for the petitioner's failure to disclose various arrests and convictions on his Personal History Disclosure

Form. It was the testimony of the petitioner that he completed his Personal History Disclosure Form from memory. He acknowledged that he disclosed only his 1973 charge and conviction for possession of marijuana (exhibit R-6). According to the petitioner, he did not disclose his other arrests and charges because he had forgotten them.

The petitioner also testified concerning a telephone interview conducted by a Division of Gaming Enforcement investigator. According to the petitioner, at the time of the interview, he could remember only the conviction which he had disclosed on his Personal History Disclosure Form. It was necessary for the investigator to jog his memory concerning the other charges. After the investigator provided some of the details, the petitioner remembered the events and discussed them with the investigator. The petitioner also stated that he did not realize he had been arrested pursuant to the harrassment and assault and battery charges in June 1983. However, he did acknowledge that he went to court and the charges were then dismissed.

It is difficult to accept the petitioner's explanation for his failure to disclose most of his arrests and conviction record on his Personal History Disclosure Form. The form requires disclosure not just of arrests, but also of charges. Therefore, even if the petitioner did not feel he had been arrested in June 1983, he certainly knew that he had been charged by his wife with harrassment and assault and battery. He also knew that it was necessary to go to court before the charges were dismissed. His explanation that he forgot this matter is particularly unbelievable when it is remembered that these charges were dismissed on August 30, 1983, which was less than two months before he filed his Personal History Disclosure Form.

CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:21-1 et seq.,) an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to section 86b of the Act, the Commission shall deny licensure to any applicant on the basis of his failure to reveal facts material to qualification, or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

It is undisputed that the petitioner failed to reveal his complete record of criminal and disorderly persons arrests, charges and convictions on his Personal History Disclosure Form. In fact, he listed only his 1973 conviction for possession of marijuana. He did not disclose two similar charges in 1972, a resisting arrest charge in 1977, a possession of marijuana charge in 1978, and harrassment and assault and battery charges in June 1983. Although the petitioner explained that these charges were not disclosed because he had forgotten them, I have found that this explanation is not believable. Thus, the respondent's failure to disclose did not result from ignorance or inadvertence. Therefore, I **CONCLUDE** that the respondent has intentionally failed to disclose facts material to his qualifications for licensure, within the meaning of sections 86b and 90e of the Casino Control Act. I further **CONCLUDE** that the petitioner's intentional failure to disclose material facts prevents him from affirmatively demonstrating his good character, honesty and integrity, within the meaning of sections 89b(2) and 90b of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Kevin F. Monaghan for licensure as a casino employee be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 13, 1985
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 14, 1985
DATE

Bernadette T. Fruger
CASINO CONTROL COMMISSION

Mailed to Parties:

June 18, 1985
DATE

Ronald J. Parker/k.s.
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

R-1	Statement of disposition, dated April 24, 1985
R-2	Statement of disposition, dated April 24, 1985
R-3	Certificate of Judgement
R-4	Complaint and disposition, dated August 30, 1983
R-5	Complaint and disposition, dated July 31, 1984
R-6	Personal History Disclosure Form

WITNESSES

FOR THE PETITIONER:

Kevin F. Monaghan

FOR THE RESPONDENT:

Kevin F. Monaghan

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-88
OAL DOCKET NO. CCC 1713-85
REGISTRATION NO. 52828-40

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

FINAL ORDER

v.

CYNTHIA M. NEEDHAM,

Respondent.

A hearing in this matter having been conducted in the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 11, 1985,

IT IS on this 26th day of December 1985, ORDERED that the initial decision is modified as follows:

1. That portion of the initial decision which concludes that the respondent's "continued registration would be inimical to the policies of the Casino Control Act and the interests of the casino industry. N.J.S.A. 5:12-86(d)," (I.D. at 5) should be corrected to refer to N.J.S.A. 5:12-86(c)(4).

IT IS FURTHER ORDERED that the casino hotel employee registration of Cynthia M. Needham is revoked based upon the

reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Cynthia M. Needham is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Cynthia M. Needham, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1713-85

AGENCY DKT. NO. 85-88

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,

v.

CYNTHIA M. NEEDHAM,
Respondent.

William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Howard Kleinman, Esq., for respondent

Record Closed: October 9, 1985 Decided: October 28, 1985

BEFORE **JEFF S. MASIN,** ALJ:

On February 6, 1985, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission (Commission) seeking an order from the Commission revoking the casino hotel employee registration of Cynthia M. Needham. The complaint charged that Ms. Needham had been arrested on February 6, 1985 for a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, as a result of an incident occurring at the Trump Plaza Hotel/Casino.

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On March 26, 1985, the Commission issued an order suspending Ms. Needham's hotel employee registration pending final disposition of the Division's complaint and until further order of the Commission. In addition, the order transferred the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

On February 26, 1985, Ms. Needham appeared in the Atlantic City Municipal Court, pro se. She entered a plea of guilty to the complaint and was sentenced to a $25 fine and $25 costs.

A prehearing conference was held on April 23, 1985 and a prehearing order was issued on May 1, 1985. Thereafter, hearings on the proposed revocation were held on July 17, 1985 and October 9, 1985. The second hearing date was delayed because counsel for Ms. Needham filed a motion to reopen the municipal court proceedings which had resulted in the February 26, 1985 conviction. The application was denied by Honorable Bruce Weeks, Judge of the Atlantic City Municipal Court.

EVIDENCE

The Division's contention is that Ms. Needham stole $64.75 from the Trump Casino/Hotel. The incident allegedly occurred while Ms. Needham was serving as a cashier on the evening shift on February 6, 1985. The testimony of Detective Lori O'Neil, a state police detective assigned to the Division, and that of the respondent, Ms. Needham, established as an undisputed fact that Ms. Needham had indeed received $64.75 as a payment for dinners purchased by six diners at Le Grande Buffet, a restaurant located in the Trump hotel. It is undisputed by Ms. Needham that she received this money while serving as a break cashier and that sometime thereafter she pocketed the money and turned it over to a friend. The circumstances under which this occurred and the motivations and intentions surrounding the incident are the focal point for the consideration of the seriousness of Ms. Needham's activities.

The Division's sole witness, Detective Lori O' Neil, testified that she was called to the Trump Security Department on the evening of February 6, 1985. She was advised of a theft by a cashier of $64.75 The cashier was Ms. Needham. As the incident was explained to Detective O'Neil, Ms. Needham did not sign into the computer which controlled the records maintained by the cash registers. As a result, when she went on

duty at Le Grande Buffet she was not able to enter her transactions on the computer. She prepared a slip of paper noting the receipt of the $64.75 and then realized, after the patrons had seated themselves at the dinner table, that she had made a mistake in that she only charged six patrons rather that the seven who were in the group. Ms. Needham advised the patrons that it would be necessary for them to pay for the seventh meal and they indicated that they would do so after finishing the meal. When the seventh patron went to pay Needham had left for another location (the break which she was giving had ended) and Needham's supervisor determined that the other six dinners, that is the $64.75, had not been entered into the computer.

Detective O'Neil interviewed Ms. Needham in the Division of Gaming Enforcement's office at Trump. She was advised of her Miranda rights. Thereafter she explained that after she realized that she didn't sign into the computer she tallied up the meals and put the money in her pocket. According to O'Neil, Needham advised her that she initially was going to log the transaction on the computer when she signed onto it. However, during a second conversation on the same evening Needham told O'Neil that she "stole the $64.75." The respondent advised O'Neil that she had met a girlfriend in the bathroom and given her the money. The friend was Kathy Connell.

Detective O'Neil also testified about her conversations with Kathy Connell. Connell told O'Neil that she had met with the respondent twice on the evening of February 6. The first meeting took place in the ladies room. At that time the respondent told Connell that she had made an error of $38.85 on the register and had put the money "in her pocket." Later on in the evening the ladies again met and this time Needham told Connell that she had stolen the money and gave Connell "a hundred dollars to hold."

Detective O'Neil testified that after speaking with Ms. Connell on February 6 she went back and spoke to Needham a second time. At this time Needham "admitted to stealing the $64.75." Needham acknowledged that she had given the money to Connell and said that the remainder of the hundred dollars was "her own, her personal money."

On cross-examination Detective O'Neil advised that Ms. Needham's supervisor, Deborah Stroyek, told O'Neil that the only thing that she had been told by Needham concerning the money was that Needham had made a mistake by not charging the seventh dinner, a $12.95 error.

Cynthia Needham testified in her own behalf. She acknowledged that she had entered a plea of guilty in municipal court. She said that she did so after arriving in court and being told by Detective O'Neil to plead guilty and that her parents would not be told about it and that the matter would be over with. Ms. Needham admitted that she had indeed taken the $64.75 and given it to Kathy Connell along with some money of her own. She explained that she had come on duty as a relief cashier at Le Grande Buffet and had realized that she had not been logged onto the computer. She called downstairs to tell the general cashier to put her on the computer, a procedure that sometimes took up to five minutes. In the meantime customers came along and she took $64.75. She wrote a receipt for this money out by hand and gave it to the room manager. She placed the $64.75 in her bank in the cash register. The bank consisted of $300. She then told the room manager that she had not charged one patron. The patron advised that he would pay on the way out. Ms. Needham's relief ended before the patron returned and she left with her bank, which still contained the $64.75 in addition to the original $300.

Sometime later in the evening Ms. Needham became nervous as she realized that she had an additional $64.75 in the bank and that there was no transaction on the computer to show why this money was in the bank. She "didn't know what to do." She did not want her tally to be either short or over. She explained that if she was more than $2.00 or $3.00 short she could get in trouble and that if she was over $50.00 short she could be suspended. In addition, if she was over on her count, that is if the bank had more money in it than the transactions seem to warrant, she could also get in trouble. Ms. Needham, who was 19 years old at the time, explained that she was unsure of what to do. She ran into a girlfriend, Kathy Connell, and gave her all the money that was in her pocket, which consisted of the $64.75 which she had removed from the bank in her nervousness, and some of her own money. She denied that she had met with Connell more than once during the evening in question and also denied she had given Connell a $100 bill.

DISCUSSION

A review of the testimony presented by the witnesses, particularly that of Ms. Needham, establishes as undisputed fact that Ms. Needham received $64.75 from six of seven patrons for dinner at Le Grande Buffet on February 6, 1985. In addition, it is undisputed that Ms. Needham was not at the time of this transaction entered onto the computer and that therefore she could not place the transaction into the register record.

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It is further undisputed, and I **FIND,** that sometime during the evening of February 6 Ms. Needham took the $64.75 and placed it on her person and ultimately gave it to Kathy Connell, a girlfriend who also worked in the hotel.

As previously noted, Ms. Needham entered a plea of guilty to the disorderly persons offense of theft by unlawful taking of less than $200. The money which she had received while on duty from patrons from Le Grande Buffet constituted money which had been given to her while she was serving in an employer-employee capacity. She had a great obligation to safeguard these monies and to properly place them into her bank or otherwise account for that money to her supervisors. She obviously had no right to take the money and convert it to her own use.

The Division contends that Ms. Needham's actions, while they resulted in a plea of guilty to the disorderly persons offense, could have resulted in her conviction of a third degree offense in that N.J.S.A. 2C:20-2b(2)e makes theft while in a fiduciary position a crime of the third degree. Theft constituting a crime of the third degree is a statutory disqualifying offense under Section 86(c)(1) of the Casino Control Act.

Although in a broad sense an employee acts in relationship to an employer as a fiduciary when dealing with the employer's funds, a review of the theft section of the Code of Criminal Justice, 2C:20-1 et seq. shows that the definition of "fiduciary" as that term is used in the theft section and more specifically in Subsection 20-2b(2)e is limited to such situations as might be considered "legal" fiduciaries such as executors, general administrators of estates, guardians, trustees, trustees in bankrupcy, assignees, partners and officers of corporations, etc. N.J.S.A. 2C:20-1b. Thus, Ms. Needham's offense, constituting a disorderly persons offense, cannot be considered conduct which, had it been prosecuted, could have resulted in her conviction of a crime of the third degree. Therefore, she did not engage in conduct which constitutes a statutory disqualifying offense pursuant to the Casino Control Act and her license is therefore not subject to automatic revocation under Section 86(c)(1).

Despite the fact that Ms. Needham's actions do not rise to the level of an automatic disqualifier from registration, they do indicate that her continued registration would be inimical to the policies of the Casino Control Act and the interests of the casino industry. N.J.S.A. 5:12-86(d). An employee who steals from an employer, even in

circumstances such as this, clearly is an individual bereft of trust. Although I strongly suspect that Ms. Needham's actions in connection with the incident of February 6 resulted from a combination of fear and immaturity[1], to allow Ms. Needham to continue at this time as a registrant, at least in a capacity which places her in contact with her employer's money, would be inappropriate. Although she does not deal with casino funds, there is a substantial likelihood that if she were to continue as a registrant and a cashier, she would frequently face temptation. In addition she might well make other mistakes during her cashier duties and find herself in situations where she might be tempted to avoid the discovery of an overage or shortage by the same type of action which she undertook on February 6, 1985. As such, her continued registration is inadvisable.

CONCLUSION

For the reasons expressed, I **CONCLUDE** that Cynthia N. Needham's casino hotel employee registration must be revoked. It is so **ORDERED.**

---

[1] Ms. Needham is now 20 years old. She was 19 at the time of the incident. She is a freshman at Stockton State College, where she is a psychology major. Prior to her employment in the casino industry she was employed as a cashier and assistant manager for Cumberland Farms.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 28, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

October 29, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

October 31, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

ks

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EXHIBITS

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-CSI-6
OAL DOCKET NO. CCC 5569-84
APPLICATION NO. 93-70

APPLICATION OF NEW JERSEY STATE NEWS COMPANY, INC. FOR A CASINO SERVICE INDUSTRY LICENSE	:	FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the applicant and a reply thereto having been filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of July 31, 1985,

IT IS on this 6th day of August 1985, ORDERED that the initial decision is modified as follows:

> At p. 3 of the initial decision, the ALJ indicates that Robert Cohen "made payments between May 1976 and July 1979 totaling $9,900." The record reveals and the Commission so finds that, in addition to the $9,900, Mr. Cohen made a payment of $27,000 to Douglas LaChance in the spring of 1977.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Robert B. Cohen is prohibited from applying for any license, registration, qualification or approval required under the Casino Control Act except pursuant

to provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that New Jersey News Company, Inc. is prohibited from conducting direct or indirect business with or supplying any goods or services to any casino licensee or to any casino agent or employee acting on behalf of a casino licensee until further order of the Commission; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between New Jersey State News Company, Inc. and its casino licensees or their employees or agents acting on behalf of casino licensees be terminated within fifteen (15) days of the date of this order; and

IT IS FURTHER ORDERED that copies of this final order be served upon New Jersey State News Company, Inc., the Division of Gaming Enforcement, the Office of Administrative Law and all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5569-84

AGENCY DKT. NO. 84-CSI-6

NEW JERSEY STATE NEWS COMPANY, INC.,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Martin London, Esq., a member of the New York Bar, admitted pro hac vice, for petitioner (Paul, Weiss, Rifkind, Wharton & Garrison, attorneys); Paul O'Gara, Esq. (Sterns, Herbert & Weinroth, attorneys, local counsel)

Patricia M. Wild, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: December 11, 1984 Decided: January 11, 1985

BEFORE **JEFF S. MASIN,** ALJ:

New Jersey State News Co., Inc. (New Jersey State News), a wholly owned subsidiary of Hudson County News Company, seeks a license as a casino service industry, pursuant to N.J.S.A. 5:12-92c. By letter of March 14, 1984, the Division of Gaming Enforcement advised the Casino Control Commission (Commission) that it was recommending denial of the application because of its concerns with respect to certain

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conduct engaged in by the company's president and principle stockholder, Robert B. Cohen. Mr. Cohen owns 98.5 percent of the outstanding stock of Hudson County News Company and 100% of New Jersey State News.

Petitioner requested a hearing on the proposed denial and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 24, 1984, before Honorable Norman D. Smith, A.L.J., and a Prehearing Order was issued on September 27, 1984. A hearing was subsequently held before Administrative Law Judge Jeff S. Masin on November 27, 1984, at the Mercer County Courthouse. Following the hearing, counsel for the parties submitted briefs and the record was closed upon receipt of the petitioner's brief on December 11.

BACKGROUND OF THE PETITIONER

As noted above, the petitioner, New Jersey State News Company, is a wholly owned division of Hudson County News Company, a business in which Robert Cohen owns 98.5 percent of the stock. The remainder of the stock is owned by other members of the Cohen family. Hudson County News Company is a wholesale distributor of newspapers and periodicals to retail establishments throughout New Jersey, certain parts of New York State, including New York City, and other areas. The business is a substantial one, having been described in certain papers filed in this hearing as the "largest wholesale magazine distributor in the country with assets of approximately 30 million dollars."[1] New Jersey State News Company serves as a wholesale distributor of newspapers and magazines to the casino hotel industry in Atlantic City. In six of the casinos, the company provides wholesale services to concessionaires who run newstands in the lobbies of the hotels. In the other three entities, the hotels themselves serve as the retailers and the company therefore deals directly with the hotels.

According to the testimony of Robert Cohen, the average billing to the retailer at the casino hotels is approximately $600 to $800 a week.

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[1]Sentencing transcript, In the Matter of United State of America v. Robert Cohen, United States District Court, Southern District of New York, Exhibit R-1, p. 12.

The parties have entered into a series of stipulated facts which are set forth in Exhibit P-1. These facts deal with the 1981 conviction of Mr. Cohen for violations of the Taft-Hartley Act, 29 U.S.C. 186(a)(1); 18 U.S.C. Section 2. Mr. Cohen entered a plea of guilty to the charge contained in an Information filed in the United States District Court for the Southern District of New York on June 30, 1981. The gravamen of the charges against Cohen were that he had made illegal payments to Douglas LaChance, president of the Newspaper and Mail-Deliver's Union (NMDU), which union represented the truck drivers employed by Hudson County News Company, as well as those of other newspaper publishers and wholesale delivery companies. According to the information, Cohen made payments between May 1976 and July 1979 totalling $9,900. As a result of his conviction, Cohen was sentenced by Honorable Charles L. Brieant, Jr., United States District Judge, to a one year prison sentence on each of 20 counts of the information, the sentences to run concurrently with each other and to be suspended. Cohen was placed on probation for a period of three years and fined a total of $150,000. The fine was paid within two weeks. The probation was terminated upon the filing by Hudson County News Company and its affiliates of amended tax returns for all years not barred by the statute of limitations.

According to the stipulated facts as well as information contained in the sentencing transcript in the criminal matter, Douglas LaChance, the union president to whom Cohen made the payments, was convicted in 1980 of 121 counts of racketeering, extortion and violations of the Taft-Hartley Act. LaChance was charged with having obtained approximately $330,000 in illegal cash payments from 14 companies in the newspaper and magazine delivery business in New York and New Jersey. LaChance was sentenced to 12 years in prison and fined $100,000.

The stipulation of facts, which has been stipulated to as to the facts but not as to the relevancy thereof, identifies a number of officials of various news distributors in the New York metropolitan area who made illegal payments to LaChance or other union officials and who either were prosecuted as a result of their actions or were granted immunity from prosecution, presumably for their cooperation with the authorities. At least seven different companies, as well as some subsidiaries thereof, are identified as having made such payments. In addition, the stipulation of facts reveals that the United States government alleged at the LaChance trial that LaChance's actions constituted a pattern of illegal activity in an industry which, as Assistant United States Attorney Korn described at the LaChance trial and Mr. Cohen described in testimony at this hearing, is one in which the wholesale companies have no formal contracts with the publishers and

the publishers can at any time terminate their affiliations with the wholesalers and either distribute directly to the dealers themselves or through other wholesalers. In addition, as Mr. Cohen testified, and as this court finds, the wholesale distribution industry is one in which the participants are vitally affected by their ability to render timely distribution services. The time value of the magazines, and especially the newspapers, is evident and any delay in their distribution poses a substantial threat to the business relationship between the wholesalers and the distributors and theatens the wholesalers with loss of business.

It is against the above background that Mr. Cohen testified as to the reasons why he had made payments to LaChance and his cohorts. Cohen testified that, although he had been involved in the business for some years before 1973, he first discovered the illegal payment system in that year when he became involved in the financial end of the business as the result of the death of his father and the company's business manager. Mr. Cohen acknowledged that the reason why he had made illegal payments from the time he learned of the procedure in 1973 up until the time he began cooperating with the government in 1979 was "we basically wanted to keep our business." Cohen identified the potential for slow downs of deliveries and stated that "I think I got the message at that point that you either made the payments or you were out of the business and going to the U.S. attorney just simply never occurred to me."

Portions of the stipulation of facts note the testimony of several wholesalers at the LaChance trial that they made payments because they felt that to do otherwise would result in their being put out of business. As one distributor, Benjamin Gelfand, noted, payments were made "to continue the business in the orderly fashion without any undue problems." Another distributor, Samuel Klinghoffer, testified that he had experienced slow downs and stoppages which were very costly.

In addition to testifying concerning the circumstances surrounding the illegal payments and the criminal conviction, Mr. Cohen testified that he is 59 years of age and has been involved with Hudson County News Service for most of the time since 1947. Cohen testified that when he learned that the federal government was investigating the distribution business, he received a request to come over and talk to the U.S. Attorney. He consulted with his counsel and then went to the U.S. Attorney's office and offered to give them all the information that he had. He provided records when they were

subpoenaed and told the truth during his interviews with the federal attorneys. He received no promises or consideration in connection with his plea of guilty.

Mr. Cohen testified that he has been recognized for his achievements by Brandeis University and was named the Man of the Year for 1982 by the Read magazine group. He also has received awards from the Publishers Division of the United Jewish Appeal and the American Jewish Congress.

The Hudson County News Company holds leases to operate facilities at Newark Airport and Jacksonville Airport. The company recently qualified as a bidder for newsstands with the Metropolitan Transit Authority (MTA), which operates the New York subway systems. The MTA was advised of his criminal conviction prior to their accepting him as a qualified bidder. In addition, Cohen has received licenses as a racehorse owner from the New Jersey, New York and Maryland Racing Commissions since the time of his conviction. He was questioned as to the criminal charges in connection with these licenses.

Hugh Crocker, circulation director for Triangle Publications, the publisher of TV Guide and Seventeen magazines, testified on behalf of Mr. Cohen. Crocker deals with some 450 wholesale distributors throughout the country. His company also distributes Readers Digest and Newsweek.

Mr. Crocker testified that wholesale distributors serve as the only means used by publishers to distribute their publications to retailers. The wholesaler receives the publications from the publisher for the purpose of collating and distributing them. The wholesaler distributes them to the retailer and then advises the publisher of the amount of unsold items for which the wholesaler is credited. Some wholesalers, among them Hudson County News, have the privilege of filing affidavits identifying the amount of unsold goods and receiving credit from the publisher for those unsolds. Other companies, whose reliability is perhaps not as trustworthy or established as the affidavit-privileged wholesalers, are required to send parts of the cover sheets of the publications back to the publishers in order to receive credit for the unsold copies.

In determining who to use as a wholesaler, Mr. Crocker relies upon an assessment of the management of the wholesaler and the financial resources thereof.

There is a need for a wholesaler to understand the needs of the system and the accounting requirements.

Mr. Crocker is a member of the Audit Bureau of Circulation (ABC), which is a nonprofit tri-partite organization consisting of advertisers, advertising agencies and publishers, who verify at the publisher's place of business the number of copies sold in order to determine advertising rates through a knowledge of the paid circulation of publications.

Triangle Publications annually returns approximately $5,000,000 to Hudson County News based upon affidavits as to unsolds. Periodic audits are conducted by Price-Waterhouse to determine the accuracy of the affidavits.

Mr. Crocker has known Mr. Cohen for 14 years and dealt with his father, who operated the Hudson County News Company before Mr. Cohen, since the late 1940's. He has never found Mr. Cohen to be dishonest and is aware that Mr. Cohen's company is used by other publishers such as the Hearst Publications, Conde Nast Publications, Time Magazine, CBS Publications, etc. as well as the New York Times and the Philadelphia Inquirer. Mr. Cohen's reputation among these publishers is extremely high.

Crocker noted that in approximately 1976 a large wholesale distributer in Manhatten was failing financially and publishers asked Mr. Cohen and his company to take over the distribution of publications in that area. This has also occurred in Boston. Such a decision to ask Hudson County News to come in and take over this territory would be based upon an examination of the resources, management, ability and integrity of the company.

Mr. Crocker advised that he had a personal, social relationship with Mr. Cohen as well as a professional relationship. He was aware of Cohen's conviction and did write a letter to the sentencing judge prior to Mr. Cohen's sentencing.

DISCUSSION

N.J.S.A. 5:12-92c requires that various entities defined as casino service industries must be licensed prior to the commencement or continuation of any business with a casino licensee or its agents. Licensure may be denied where an applicant is

disqualified in accordance with the criteria contained in Section 86 of the Act. Various principals and operators of such industries, such as owners, management and supervisory personnel and other principle employees, must qualify in order for the service industry to be licensed. Section 86 provides that applicants may be denied licensure where such licensure would be inimical to the policies of the Act, N.J.S.A. 5:12-86(c)(4). The Division herein contends that licensure of this service industry would be inimical because of the nature of Mr. Cohen's conviction for a violation of the United States Code.

This case presents some significant difficulties in determining the appropriate outcome. It is evident from what has been presented in the course of the hearing that Robert Cohen, who for all intents and purposes is New Jersey News Company, has been an extremely successful businessman running a major company with a signficant role in the wholesale distribution business. Further, the evidence of Mr. Cohen's reputation, although limited to the testimony of Mr. Crocker and the qualifier's own testimony as to his recognition within the industry and with other groups, demonstrates impressively that Mr. Cohen holds a respected position and the trust of the publishers whom he services. Were it not for his sole criminal involvement, there is no question but that he would qualify and that the company could be licensed. However, Mr. Cohen's brush with the law involved what seems to be a most inopportune type of illegal action for one seeking to have a connection, albeit indirect, with the casino industry.

In essence, the evidence here demonstrates that Cohen paid monies to union officials, particularly Mr. LaChance, in order to buy labor peace. He was not alone in doing so, having been joined by many others in his industry. Whether the practice was industry wide, covering the full gamut of distributors in the New York, New Jersey, Philadelphia area, has not been made clear. However, the representations of counsel, the testimony of Mr. Cohen, and the remarks of the United States Attorney in the LaChance trial and at Cohen's sentencing all make it apparent that the practice was widespread.

In considering the propriety of licensing this company, it is relevant to consider the Casino Control Commission's treatment of another service industry whose history was tainted by violations of law occurring in the context of an industry wide pattern. Merchants' Wine and Liquor, Inc. v. Division of Gaming Enforcement, CCC 3814-83, dec'd March 19, 1984, adopted by the Casino Control Commission, June 11, 1984. In Merchants', the corporation, which was seeking to qualify as a service industry pursuant

to Section 92c of the Act, was the holder of a plenary wholesale liquor license issued by the Division of Alcoholic Beverage Control. In 1972, Merchants', and a commonly owned company, F & A Distributors (F & A), were fined $25,000 for violations of the Federal Alcohol Administration Act. The violations involved rebating alcoholic beverages to retail licensees and failing to keep records of the disposition of alcoholic beverages used as rebates. The rebates were a means by which wholesalers competed against each other. In addition, further charges were filed against Merchants', F & A and another company commonly owned, Gillhaus, in 1979. These charges concerned illegal trade practices engaged in by the companies involving violations of the regulations governing trade practices in the industry. As a result of these violations, after giving consideration to cooperation by the principals of the companies as well as recommendations of the Antitrust Task Force of the Division of Criminal Justice, F & A was fined $20,000 and Merchants', $19,000.

In considering whether Merchants' qualified for licensure as a service industry, Honorable Richard L. Voliva, Jr., the administrative law judge who heard the case, determined that despite Merchants' history of violations of the regulatory scheme governing competition in the liquor industry, the company should be licensed. After finding that the violations had occurred, and that they constituted serious violations of the regulations of both the ABC and the Federal Bureau of Alcohol, Tobacco and Firearms, Judge Voliva determined that they also were indicative of a systematic and continuous pattern of violations. Despite these findings, the judge, viewing the matter in the context of the practices prevalent in the liquor industry at the time, determined that the "regulatory misconduct of the Companies was systematic of virtually all plenary wholesale license holders in New Jersey. In fact, the abuse and disregard of the regulatory scheme was not only endemic to the State, but existed nationwide."

Evidence presented in the Merchants' hearing established that following an investigation of the industry's practices by the Antitrust Task Force, it was determined that the regulations which had been violated were largely restrictive of competition and were not supportive of the concept of competition between wholesalers.

> Rather, it frustrated competition which was standard operating procedure in other industries. . . . The task force determined that these regulatory restrictions were in direct conflict with modern marketing techniques. The task force concluded that although the industry-wide regulatory violations could not be excused, they were understandable. The industry was pressured from various levels to

violate the regulatory scheme in order to compete and, accordingly, found ways to compete for business. Abstinence from participating in illegal competition would have resulted in economic hardships which were potentially severe. The task force concluded:

> Most industry trade practices reflect the industry's attempt to 'modernize' its marketing methods. Such marketing practices have caused the industry often to find itself running afoul of an inflexible regulatory scheme.

Merchants', Initial Decision at p. 5, quoting in part Report of Division of Criminal Justice Antitrust Task Force to Study the Alcoholic Beverage Industry.

Judge Voliva found that despite the seriousness of the misconduct of the qualifiers in Merchants', they had, an an overall fact, established by clear and convincing evidence their good character, honesty and integrity. Further, he determined that the qualifiers, despite their having previously committed regulatory violations in the highly regulated alcohol beverage industry "could be trusted to adhere to the requirements of the highly regulated casino industry in this State." He made this finding in part because, although the prior regulatory misconduct had been serious, they had occurred in a situation where the nature of the regulations had been such as to promote the misconduct in order to allow a viable business situation and had been recognized as such by those who had examined the industry in the Task Force Report and determined that the regulations needed to be changed.

In addition, Judge Voliva was persuaded in part by Merchants' clean record during its six years of substantial business with the casino hotels prior to the licensing decision.

The petitioner herein urges that the considerations which motivated Judge Voliva to recommend licensure of Merchants are very similar to those which speak on behalf of licensing New Jersey State News. The respondent disagrees, pointing out that the violations engaged in by Mr. Cohen were criminal in nature, not merely regulatory violations, and suggesting that the circumstances of the offenses are not similar.

There are indeed similarities between the Merchants' case and the present one. In each, otherwise highly respected businessman engaged in violations of law of one sort or another in order to allow their businesses to survive in a competitive field subject to

significant pressures from those whose goods they wholesaled. There is, however, one striking difference of considerable significance in the context of the highly sensitive casino industry and the attempt by the State of New Jersey, through the Casino Control Act, to keep the entire spectrum of casino related activities as free from taint as possible.

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(o)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos. . . ." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)7." Knight v. City of Margate, 86 N.J. 374, 381 (1981).

The one telling difference between Merchants' and the present case is the specific nature of the violations committed. In Merchants', various rebating schemes were engaged in which violated a series of federal and state regulations. In the present case, criminal violations involving illegal payments to union officials in order to secure labor peace were involved. Despite the serious nature of the rebate schemes in Merchants', and the significant role of liquor in the casino/hotel business, these violations may well be considered to be of a less serious nature than the payment by an employer of bribes in order to satisfy the greed of union officials.

While it is well recognized that the wholesale newspaper and magazine distribution industry is very time-sensitive and that it would have been extremely easy for the unions to have damaged, if not destroyed, the business of this or any other company by merely slowing down the process, the fact that the consequences of the failure to pay might have been severe does not excuse the payments in any way. As Judge Brieant pointed out during the sentencing of Mr. Cohen, neither Cohen, nor apparently any of the other wholesalers, had the courage, guts, wisdom, or whatever one chooses to call it, to alert the authorities to the existence of the pressures, demands and threats of the union and bring such tactics to a halt through the intervention of federal or state authorities. As a result, this scheme, by which union officials were able to extort money from the wholesalers, lasted for many years. During at least six of these, Mr. Cohen was aware of the problem and did nothing to stop it, but instead chose to pay. The violations engaged in

by Cohen were extremely serious and the penalties imposed by the United States District Court reflect that fact. While Cohen did not actually go to jail, the fine imposed, $150,000, bespeaks the Court's condemnation of the conduct, and the fine may well have been mitigated to that level only by Cohen's cooperation with the authorities after he learned that he was being investigated.

Given the nature of Mr. Cohen's actions, the question which must be answered is whether, as in Merchants', someone who has a history of having committed serious violations of law, indeed criminal violations, can be trusted with a casino service industry license, under the provisions of this statute. I **CONCLUDE** that N.J. News cannot.

The significant reason for the conclusion that this company cannot be licensed is that Cohen's crime, paying off union officials to buy labor peace, is one which played right into the hands of crooked union officers and unions dominated by such individuals. Without the cooperation of the payor, the payee of bribes goes unpaid. Although it is quite true that there is an element of risk in refusing to pay, as Judge Brieant pointed out, there are alternatives to paying which society must insist that individuals take in order to prevent the illegalities from continuing.

This case cannot be decided without some reference to the Casino Control Commission's well publicized efforts to prevent the infiltration of the casino industry by criminal elements, be they of the organized crime variety or be they crooked union officials. The attempts by the Commission to purge the leadership of Local 54 have been well publicized and heavily litigated, all the way to the United States Supreme Court. It is quite obvious that the Commission, in fulfilling its mandate, views the potential for labor racketeering to be a major threat to the industry. To grant a license to a company whose principle qualifier and owner has, within only a few years, been convicted of making illegal payments to labor racketeers in support of their nefarious schemes seems incongruous with the Commission's attempts to avoid permitting labor racketeering to flourish in the casino industry and its related areas.[2]

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[2]It is recognized that there has been no proof presented in this case of any link between LaChance and organized crime. However, the sensitivity to illicit conduct involving unions remains the same, whether the wrongdoers are "organized" or otherwise.

Because I have found that the sole owner and significant qualifier of the licensed applicant cannot qualify, I must **CONCLUDE** that the licensure of New Jersey State News would be inimical to the policies of the Casino Control Act. Therefore, the license application must be **DENIED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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[3]This conclusion is unaffected by the evidence of Cohen's licensure as a race horse owner and his Company's pre-qualification for bidding on N.Y. MTA projects. The fact that other agencies, or jurisdictions, may have found Cohen and/or Hudson County News acceptable under their statutes, and for their purposes, while relevant, is unpersuasive in light of the concerns involved in this industry and the extremely strict regulatory atmosphere.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 17, 1985
DATE

JEFF S. MASIN, ALJ

Receipt ~~A~~acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

January 17, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Stipulation of Facts

On behalf of respondent:

R-1 Copy of sentencing transcript, United States v. Robert Cohen, United States District Court, Sothern District of New York, June 30, 1981

R-2 Information, Docket No. 81 CRIM. 0227, United States of America v. Robert Cohen, filed April 2, 1981

R-3 Judgment and Probation/Commitment Order, dated June 30, 1981

Joint exhibits:

J-1 Discharge of Probation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-132
REGISTRATION NO. 49252-40
OAL DOCKET NO. CCC 7565-84

STATE OF NEW JERSEY, DEPARTMENT
OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

CHARLES E. NEWLAND

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 7, 1985;

IT IS on this 9th day of AUGUST 1985, ORDERED that the initial decision is affirmed substantially for the reasons contained in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement for revocation of the casino hotel employee registration of Charles E. Newland be dismissed; and

IT IS FURTHER ORDERED that copies of the final order be served upon Charles E. Newland, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7565-84

AGENCY DKT. NO. 84-132

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

CHARLES E. NEWLAND,

Respondent.

Joanne Cocchiola, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Craig Wellerson, Esq., for respondent (Dasti & Murphy, attorneys)

Record Closed: May 7, 1985 Decided: June 21, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on May 2, 1984, seeking judgment revoking the respondent's casino hotel employee registration, or some other appropriate sanction, pursuant to sections 91d and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based on the respondent's 1982 conviction upon a plea of guilty to one count of distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1). The issue to be determined in this matter is as follows:

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Whether the respondent, notwithstanding his 1982 conviction upon a plea of guilty to one count of distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1), which is an enumerated disqualifying offense under section 86c(3) of the Act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to section 129 of the Act.

PROCEDURAL HISTORY

On July 11, 1984, the respondent appeared before the Casino Control Commission and requested an opportunity for a hearing. For good cause shown, the Commission granted the respondent's request and the matter was thereafter transmitted to the Office of Administrative Law on October 9, 1984, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was held on December 11, 1984, and the matter was scheduled for hearing on January 28, 1985. Following an adjournment for good cause, the matter was subsequently heard on May 7, 1985.

FINDINGS OF FACT

Most of the material facts in this matter are not in dispute. The respondent is a 24-year-old resident of Ventnor, New Jersey. He is the holder of casino hotel employee registration number 49252-40, and he has been employed by Resorts International Hotel and Casino in Atlantic City, New Jersey, since August 1983. He works there as a food server and waiter, and he supervises three other employees.

On May 27, 1982, the respondent sold one gram of cocaine for $80 to Eric Willhouse, a New Jersey State Police Detective who was working undercover. According to the respondent, he was at work at a supermarket in Deptford, New Jersey, on May 27, 1982, when he received a telephone call from a friend. His friend asked if the respondent could obtain some cocaine. The respondent explained that he had known this friend for many years and he checked to see if he could obtain the cocaine.

The respondent paid a fellow employee $80 for a gram of cocaine and he later met his friend, only to discover that the friend wanted the cocaine for someone else. They then drove to the parking lot of a bar and parked their vehicle next to a vehicle

where Detective Willhouse was sitting. The respondent completed the transaction by giving Detective Willhouse the gram of cocaine in exchange for $80.

The respondent candidly acknowledged that he was a marijuana user at the time of the cocaine transaction and he stated that his friend who instigated the cocaine transaction knew that the respondent had obtained marijuana at work. It was the credible testimony of the respondent that he had never sold a controlled dangerous substance prior to May 27, 1982, and that he had not made such a sale after that date.

The respondent was surprised to learn of his indictment in October 1982 for possession, possession with intent to distribute and distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20(a) and N.J.S.A. 24:21-19(a)(1), arising from his sale of cocaine to the undercover detective on May 27, 1982 (exhibit P-1). On November 29, 1982, the respondent pled guilty to the offense of distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-19(a)(1), and the remaining two counts of the indictments were dismissed. The respondent was placed on probation for a period of one year and he was ordered to pay a fine of $500. The respondent was also required to perform at least 50 hours of community service (exhibit P-1). According to the respondent, he performed his community service for the Borough of Westville, and this service consisted of picking up trash, cutting weeds and cleaning police cars. It is undisputed that he satisfactorily completed all terms of his probationary sentence (exhibit R-3). The respondent has subsequently met with the Employee Assistance Program at Resorts International and it is the professional opinion of Employee Relations Counsellor Pamela J. Falk that the respondent does not have a drug abuse problem (exhibits R-1 and R-2). The respondent also explained that he no longer has contact with the circle of friends with whom he associated at the time of the drug transaction in 1982.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The only factual dispute in this matter concerns whether the respondent told undercover Detective Willhouse that he could sell more cocaine at a later date. Detective Willhouse candidly acknowledged that he had very little independent recollection of the transaction with the respondent. However, it was his testimony that the respondent had stated that more cocaine could be purchased at a later date. The respondent testified that he was asked by the undercover detective if more cocaine could

be purchased. It was the respondent's sincere testimony that he told the undercover detective that he could not obtain more cocaine. Given the acknowledged limited recollection of the detective, and the undisputed fact that he made no further purchases of drugs from the respondent, the respondent's testimony on this question is entitled to belief. Therefore, I further **FIND** that the respondent did not tell the undercover detective that more purchases of cocaine could be made.

CONCLUSIONS OF LAW

Pursuant to section 1d(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant who has been convicted of an offense specifically identified in the Casino Control Act as a disqualifying offense. It is undisputed that the respondent was convicted in November 1982 upon his plea of guilty to the offense of distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-19(a)(1). This offense is a specifically identified disqualifier from licensure, pursuant to section 86c(3) of the Casino Control Act. Therefore, I **CONCLUDE** that the respondent's conviction of distribution of a controlled dangerous substance permits the revocation, suspension or limitation of his registration, pursuant to sections 86c, 91b and 129 of the Casino Control Act.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, the appropriate sanction is revocation of the credential, in the absence of a demonstration of rehabilitation, pursuant to section 91d of the Act, or waiver, pursuant to section 91e of the Act. See, State v. Wynette Harris, Dkt. No. 81-19, Commission decision 1983. Pursuant to section 91d of the Act the respondent's casino hotel employee registration shall not be revoked on the basis of his conviction of an offense enumerated in the Act as disqualification criteria, provided that he has affirmatively demonstrated his rehabilitation, by clear and convincing evidence, with due consideration given to the rehabilitation

factors set forth in that section. The respondent was 21 years old at the time of his drug offense in May 1982. Three years have passed since that time, and he has been professionally evaluated as being without drug dependence. He satisfactorily performed the terms of his probation, including the provision of 50 hours of community service.

The respondent has no other arrest or conviction record and his sale of a controlled dangerous substance appears to have been an aberrational event, not likely to be repeated. Since August 1983, the respondent has been satisfactorily employed as a food server and waiter at Resorts International Hotel and Casino. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, notwithstanding his conviction of an otherwise disqualifying offense under section 86c(3) of the Act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or any other sanction, pursuant to sections 91d and 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Charles E. Newland be and hereby is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 21, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 24, 1985
DATE

Christine E. Headley, Asst Counsel
CASINO CONTROL COMMISSION

Mailed to Parties:

June 26, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Indictment, Judgment of Conviction and Statement of Reasons for Sentence

FOR THE RESPONDENT:

R-1 Letter, dated April 8, 1985
R-2 Letter, dated March 28, 1985
R-3 Letter, dated March 28, 1985

WITNESSES

FOR THE PETITIONER:

Eric Willhouse

FOR THE RESPONDENT:

Charles E. Newland

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-271
REGISTRATION NO. 46852-40
OAL DOCKET NO. CCC 550-84

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
BEVERLY L. NEWTON,	:	
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an Initial Decision by the Office of Administrative Law on July 23, 1984, recommending that the complaint of the Division of Gaming Enforcement be dismissed; and neither party having filed exceptions or objections thereto; and the Commission, having considered the entire record of these proceedings, resolved at its public meeting of September 19, 1984, to affirm the findings of fact, but reject certain findings and conclusions of law contained in the Initial Decision and to find the respondent disqualified; and the Commission having further resolved to waive disqualification in the interest of justice pursuant to N.J.S.A. 5:12-91(e),

IT IS on this 19th day of JULY 1985, ORDERED that the initial decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

> The ALJ concluded that the respondent was not disqualified by reason of her acknowledged commission of "the crimes of complicity in an attempted theft of movable property and complicity in an attempted theft by deception, contrary to N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:20-4," because complicity contrary to N.J.S.A. 2C:2-6 is neither an enumerated disqualifier pursuant to N.J.S.A. 5:12-86(c)(1) nor an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4).
>
> Upon independent review of the record, the Commission finds that the ALJ erred in focusing upon the fact that complicity (N.J.S.A. 2C:2-6) is not a listed disqualifying offense. Under the New Jersey Code of Criminal Justice, complicity is not a criminal offense. It is a principle of liability which establishes that a person who aids or abets in the commission of a crime is as guilty as the offender. Therefore, the proper focus here is upon the underlying substantive offenses, theft by unlawful taking of movable property and theft by deception contrary to N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:20-4. The Commission finds that such offenses are listed in section 86(c)(1) of the Casino Control Act and the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g).
>
> In view of the above conclusion, it is unnecessary to consider whether such offenses are also disqualifiers under N.J.S.A. 5:12-86(c)(4). However, it is necessary to consider whether the respondent has demonstrated her rehabilitation from disqualification pursuant to N.J.S.A. 5:12-91(d). In view of the recentness and seriousness of the respondent's unlawful conduct and her willing participation in the criminal enterprise that involved the divulging of confidential

information to an unauthorized person, we find insufficient evidence in the record to support a finding of rehabilitation by clear and convincing evidence.

IT IS FURTHER ORDERED that, in recognition of the respondent's rehabilitative efforts to date, her disqualification is waived pursuant to N.J.S.A. 5:12-91(e), and the respondent is permitted to retain her casino hotel employee registration; and

IT IS FURTHER ORDERED that Beverly L. Newton is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act other than a casino hotel employee registration except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Beverly L. Newton, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. CCC 550-84

AGENCY DKT. NO. 83-271

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

BEVERLY L. NEWTON,

Respondent.

APPEARANCES:

Anthony V. D'Elia, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Robert W. O'Hagan, Esq., for respondent (Stout, O'Hagan and O'Hagan, attorneys)

Record Closed: June 7, 1984 Decided: July 23, 1984

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on August 15, 1983, seeking judgment revoking the respondent's casino hotel employee registration, or some other sanction, pursuant to sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the indictment of the respondent on multiple counts in March 1983. The issues to be determined in this matter are as follows:

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1. Whether the respondent, with specific reference to her indictment on March 14, 1983, has committed an offense which is an enumerated disqualifier from licensure under section 86c of the Casino Control Act, or which would indicate that her continue registration is inimical to the policies of the Casino Control Act, within the meaning of section 86c(4), thereby requiring revocation of registration, or some other sanction, pursuant to sections 86g, 91b and 129 of the act.

2. Whether the respondent, notwithstanding her commission of an offense which constitutes a per se disqualifier from licensure under sections 86c and 86g of the act, has affirmatively demonstrated her rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or some other sanction, pursuant to sections 91b and 129 of the act.

PROCEDURAL HISTORY

On September 7, 1983, the respondent filed with the Casino Control Commission her request for a hearing on the complaint of the Division of Gaming Enforcement. On January 25, 1984, the Commission transmitted the matter to the Office of Administrative law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

By Order, dated March 23, 1984, the Casino Control Commission denied the respondent's motion to dismiss the complaint of the Division of Gaming Enforcement. A telephone prehearing conference was held in this matter on April 6, 1984, and the hearing was held on June 7, 1984.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 22-year-old resident of Williamstown, New Jersey. Since May 1983, the respondent has been employed by the Resorts International Casino Hotel as a room control supervisor. The respondent was promoted to this position after working as a cocktail server for approximately three months. In her present capacity, the respondent oversees the bus people and cocktail service. A letter from the respondent's direct supervisor and from the

director of restaurants, admitted into evidence as Exhibit R-1, offers the opinion that the respondent is a valuable employee of the highest integrity, loyalty and dedication.

It is undisputed that the respondent was contacted by Detective Sergeant James E. Pierce of the Neptune Township Police Department on February 16, 1983, pursuant to an investigation of a report from the Midlantic National Bank concerning the forgery and cashing of a personal check. At that time, the respondent had been an employee of the Midlantic National Bank for approximately two and one-half years. According to Detective Sergeant Pierce, his investigation revealed that the respondent and another woman, Rita Baskerville, had assisted John Kelley in his scheme to forge and cash a check purported to be drawn on the account of Catherine Hulse. On February 16, 1983, the respondent voluntarily came to the Neptune Township Police Department and, after being advised of her rights, admitted that she had spoken with John Kelley and that she had obtained check cashing procedure information from a teller at the bank.

On February 17, 1983, Detective Sergeant Pierce again spoke with the respondent. At that time, she admitted her participation in the attempts to cash checks purportedly drawn on the account of Catherine Hulse. In her voluntary statement to the detective sergeant (Exhibit P-2), the respondent admitted that John Kelley had approached her and asked her to obtain information about the accounts of Catherine Hulse. The respondent took a check drawn on the account of Catherine Hulse from the bank's files and had it photocopied. John Kelley apparently used the photocopy to duplicate the signature of Catherine Hulse on a blank check. In her statement (Exhibit P-1), the respondent said that John Kelley asked her to fill out the remainder of the check, including the amount of $900. In return, John Kelley told the respondent that she would receive $300. It is undisputed that the respondent did receive $300 from John Kelley. On February 14, 1983, the respondent filled out another check for John Kelley, this time in the amount of $2,500. Again, the respondent did not put any signature on the check.

On March 14, 1983, the respondent, Rita Baskerville and John Kelley were named in a 15-count indictment charging them with conspiracy, contrary to N.J.S.A. 2C:5-2, forgery, contrary to N.J.S.A. 2C:21-1a(2), complicity, contrary to N.J.S.A. 2C:2-6, theft of movable property and theft by deception, contrary to N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:20-4 (Exhibit P-3).

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According to Detective Sergeant Pierce, the respondent cooperated and freely provided her statement (Exhibit P-1) on February 17, 1983. When confronted with the facts developed during the police investigation, the respondent broke down and cried and admitted her participation. Detective Sergeant Pierce has interviewed many suspects during his 15 years on the Neptune Township Police Force. In his opinion, the respondent would not have committed her crime were it not for pressure from John Kelley, who has an extensive criminal record. According to the detective sergeant, he was contacted by the pretrial intervention program and asked his opinion on the respondent's suitability for admission. Looking at the nature of her offense, her cooperation, and her chances for rehabilitation, Detective Sergeant Pierce recommended that the respondent be admitted into the pretrial intervention program. It is undisputed that the respondent was admitted and successfully completed the pretrial intervention program and the criminal charges against her were dismissed.

Testifying on her own behalf, the respondent stated that John Kelley led her into committing the offense, which has been her only involvement with criminal charges. However, she acknowledged that she knew at the time of her conduct that she should not have photocopied a check from the bank files and allowed Kelley to take it. She explained that she had been letting other people do her thinking for her and that she had learned a lot from the incident about her choice of companions and the need to think for herself. She also has learned about the need for loyalty to her employer. It was the sincere and credible testimony of the respondent that there was a criminal element in the neighborhood where she formerly lived in Asbury Park. She has now relocated in Williamstown, New Jersey, and enjoys her employment at Resorts International Casino Hotel. Testifying on behalf of the respondent was Diane M. Shelton, Deputy Director of the Monmouth County Employment and Training Agency. Ms. Shelton has a Master of Social Work Degree and is a licensed social worker. She has known the respondent for approximately four or five years and is aware of the respondent's criminal offense. According to Ms. Shelton, the respondent's change of residence was a positive step. Ms. Shelton believes that the respondent will be an asset in the casino industry and that her continued employment there will be very beneficial to her. The respondent and Ms. Shelton remain very good friends. Additional letters of recommendation on behalf of the respondent were admitted into evidence as Exhibits R-2 and R-3.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

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CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the act authorizes the revocation of registration of any person for the commission of any offense or violation under the act which would disqualify such person from holding his registration.

Pursuant to sections 91b, 86c and 86g of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict the registration of any registrant automatically disqualified on the basis of his commission of an offense enumerated as a disqualifier under the act, or an offense which would indicate that continued registration would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. The credible evidence in the record establishes that the respondent committed the crime of forgery in the fourth degree, contrary to N.J.S.A. 2C:21-1a(2), by completing a check, except for the signature, in the amount of $900, drawn on the account of an individual who had not authorized that act. The credible evidence in the record also establishes that the respondent committed the same offense in regard to a check in the amount of $2,500. The same conduct of the respondent also constitutes the crimes of complicity in an attempted theft of movable property and complicity in an attempted theft by deception, contrary to N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:20-4.

The forgery crimes of the fourth degree are not specifically enumerated in the Casino Control Act as disqualifiers. Similarly, complicity in an attempted theft, contrary to N.J.S.A. 2C:2-6, is not an enumerated disqualifier. Thus, the question to be determined is whether the continued registration of the respondent would be inimical to the policy of the Casino Control Act and to casino operations. In order to determine whether the offense in question indicates that continued registration would be inimical to the policy of the Casino Control Act and to casino operations, the nature of the offense, its remoteness and the offender's conduct since the offense to the present are all matters to be considered. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Dkt. No. 79-CL-1 (1979).

The respondent's criminal conduct directly related to her employment with the Midlantic National Bank. She used her position to obtain access to a document bearing the signature of a bank customer. A photocopy of this signature was then used in an attempt to forge and cash two checks at the bank.

At the time of her offense, the respondent was 21 years old. Approximately a year and one-half has passed since that time, and the respondent was admitted into and successfully completed a pretrial intervention program. As a result, the criminal charges against her were dismissed. These are the only criminal charges which have ever affected the respondent, and it is clear that this conduct which led to the criminal charges was aberrational in nature, and unlikely to ever be repeated.

The respondent has been satisfactorily employed at a licensed casino facility for over one year. During this time, she has obtained a promotion and has received the favorable recommendations of her supervisors. The respondent's offense was of a very serious nature. However, in light of all of the circumstances, the credible evidence in the record does not indicate that her participation in the legalized gaming industry would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I must **CONCLUDE** that the respondent has not engaged in conduct constituting an offense which would indicate that licensure would be inimical to the policy of the act and to casino operations, within the meaning of N.J.S.A. 5:12-86c(4). Therefore, I further **CONCLUDE** that the complaint filed by the Division of Gaming Enforcement against the respondent should be dismissed.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Beverly L. Newton be and hereby is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 23, 1984
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 23, 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Voluntary statement of Beverly L. Newton
P-2 Personal History Disclosure Form
P-3 Indictment

FOR THE RESPONDENT:

R-1 Letter, dated June 6, 1984
R-2 Letter, dated June 5, 1984
R-3 Letter, dated June 7, 1984

WITNESSES

FOR THE PETITIONER:

James E. Pierce

FOR THE RESPONDENT:

Diane Shelton
Beverly L. Newton

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-56
OAL DOCKET NO. CCC 2897-84
REGISTRATION NO. 07069-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	FINAL ORDER
v.	:	
HERMINIO NUNEZ,	:	
Respondent.	:	

A hearing in this matter having been conducted in the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 31, 1984,

IT IS on this 30th day of September 1985, ORDERED that the initial decision is modified as follows:

(1) That portion of the initial decision which indicates that rehabilitation under section 91(d) of the Act (N.J.S.A. 5:12-91(d)) must be demonstrated by a preponderance of the evidence in the record is rejected. Section 80 of the Act, the general provision governing licensure, states, "It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications...." N.J.S.A. 5:12-80(a). While section 91(d) indicates only that rehabilitation must be "affirmatively demonstrated," the Commission does not accept

demonstration of rehabilitation by a lesser standard than that required for the demonstration of qualification generally, i.e., by clear and convincing evidence. The error is harmless, however, because we agree with the ALJ's evaluation of the respondent's proofs and conclude that he did not prove his rehabilitation by clear and convincing evidence.

IT IS FURTHER ORDERED that the casino hotel employee registration of Herminio Nunez be and hereby is revoked based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Herminio Nunez is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Herminio Nunez, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

OAL
WORD PROCESSING
TRENTON

State of New Jersey SEP 23 2 17 PM '84

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2897-84
AGENCY DKT. NO. 84-56

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
HERMINIO NUNEZ,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Herminio Nunez, respondent, pro se

Record Closed: August 7, 1984 Decided: September 21, 1984

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By way of complaint filed on February 22, 1984, petitioner seeks to revoke respondent's casino hotel employee registration. Respondent requested a hearing and the matter was thereafter transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing order entered on July 18, 1984, stated that the following three issues were to be addressed at the hearing:

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(a) Whether respondent's criminal indictments on July 14, 1983 and July 19, 1983, for violations of N.J.S.A. 24:21-20a(1) (possession of a controlled dangerous substance) and N.J.S.A. 24:21-19a(1) (possession of a controlled dangerous substance with intent to distribute), and respondent's guilty plea to the two counts of possession of a controlled dangerous substance with intent to distribute constitute sufficient grounds to revoke his casino hotel employee registration pursuant to N.J.S.A. 5:12-86c(3).

(b) Whether the indictments and guilty plea are inimical to the policy of the Casino Control Act and casino operations, pursuant to N.J.S.A. 5:12-86c4, thus warranting revocation of respondent's registration.

(c) Whether the alleged unprosecuted violations of N.J.S.A. 24:21-20a(1) warrant revocation of respondent's casino hotel employee registration pursuant to N.J.S.A. 5:12-86g.

In addition to the above issues, respondent was afforded the opportunity at the hearing to demonstrate his rehabilitation.

A hearing was held at the Absecon City Hall, Absecon, New Jersey, on August 7, 1984.

FACTUAL FINDINGS

Undisputed Facts

Respondent is a 25-year-old lifelong resident of Atlantic City, New Jersey. He is married and has four children ranging in ages from eight months to six years. He has substantial financial responsibility for his family. He has been employed by Resorts International Hotel Casino for the past five years. Prior to assuming the position of Kitchen Supervisor two and one-half years ago, he worked in the kitchen utility department. As Kitchen Supervisor, respondent supervises approximately 25 employees who are responsible for cleaning and supplying the kitchen.

On July 14, 1983, respondent was indicted by the Atlantic County Grand Jury in a two-count indictment which alleged that on or about June 18, 1983, he unlawfully and knowingly possessed a controlled dangerous substance (cocaine) and that he unlawfully and knowingly possessed the controlled dangerous substance with intent to distribute. On July 19, 1983, respondent was indicted for the second time by the Atlantic County Grand

Jury as a result of an incident on June 25, 1983. The two-count indictment again charged him with possession of a controlled dangerous substance (cocaine) and possession of the controlled dangerous substance with intent to distribute.

Respondent initially entered a plea of not guilty to all four counts of the two indictments. On the advice of his attorney he retracted the pleas of not guilty and entered guilty pleas to the two counts of possession with intent to distribute. Respondent's attorney, a public defender, told respondent that he would lose the case if it went to trial, which would result in the imposition of a jail term. Respondent, who was concerned about the welfare of his family and did not want to go to jail, entered the guilty pleas. His attorney also advised him that a guilty plea would not jeopardize his job.

On September 9, 1983, respondent was sentenced for the two counts of possession with intent to distribute. He received two concurrent sentences as follows: 18 months' probation, two days in the Atlantic County Jail for which he was given credit for two days served, a fine of $1,000 and a penalty of $25 to be paid to the Violent Crimes Compensation Board (P-2, P-3). The two counts of possession of a controlled dangerous substance were dismissed. The Honorable Robert Neustadter, J.S.C., stated the following reason for imposing the sentence (P-2, P-3):

> This sentence as recommended in the plea agreement is marginally acceptable because the offenses happened 1 week apart and because of defendants prior record. He is given this last chance at probation with a heavy fine for purposes of punishment, as a deterrent, for rehabilitation, and so as not to deprecate the offenses. If he commits another offense while on probation, he will be sentenced to States Prison for 3-4 years.

At the sentencing, respondent told the judge that he was guilty of possession of a controlled dangerous substance with intent to distribute.

Joseph Paparone is a detective who has been employed by the Atlantic City Police Department for approximately twelve years. He has been a detective for the past four and one-half years. On June 18, 1983, he was assigned to the Street Crimes Task Force. During the early evening he and several other detectives had set up a stake-out on Sovereign Avenue in Atlantic City. Detective Paparone and respondent both agree that in June 1983, Sovereign Avenue was considered to be a heavy drug trafficking area.

For a period of 20 to 25 minutes on June 18, 1983, Detective Paparone observed respondent in front of 25 South Sovereign Avenue. The detective observed three or four unidentified males approach respondent, speak with him, and hand him undisclosed sums of money. Each time this happened, respondent would go into the alley near a carport and extract small glassine envelopes from a larger package which he had placed in the carport. During the surveillance, respondent changed the location of the glassine envelopes from one spot to another. Respondent was the only person who went to either of those two spots to extract the glassine envelopes. When the detective suspected that illicit narcotics activity was being conducted, several other task force members were called in and the area in and around the carport was sealed off.

Respondent was frisked and the area where respondent was observed extracting the small glassine envelopes was searched. The police recovered a foil-wrapped package which held five glassine envelopes containing a white powder substance. Detective Paparone conducted a field test for cocaine, which yielded positive results. An analysis of the white powder subsequently conducted by the State Police proved the substance to be 1.31 grams of cocaine. Respondent was arrested. While the police did not find any drugs on respondent's person, he did have $596 in his wallet. (At the time of the arrest, respondent had a net take home pay of approximately $250 per week.) An investigation report of this incident was prepared on June 18, 1983 (P-1). Shortly after the arrest, respondent who had been residing on Sovereign Avenue, moved to another location.

Five uncertified letters from supervisory employees at Resorts International Hotel were introduced into evidence on behalf of respondent (R-1 through R-5). Respondent requested that the letters be written for a Casino Control Commission hearing because he was having "some trouble" and he needed recommendations. Respondent stated that he did not specifically tell any of the authors of the letters that a revocation proceeding had been initiated as a result of his drug convictions.

Disputed Facts

Respondent's account of the June 18, 1983 arrest is somewhat different from the testimony given by Detective Paparone. Respondent states that at the time of the arrest he and several other persons were told to "get up against the wall." Respondent denies that he was selling drugs and claims that he told the police that he was on vacation

and that the $596 he had in his wallet was money which he had earned at work. Respondent denied seeing the police officers pick up the glassine envelopes on Sovereign Avenue. Respondent claims he was just standing around on Sovereign Avenue at the time of the arrest.

RESOLUTION OF DISPUTED FACTS

I am satisfied from the testimony of Detective Paparone, which is corroborated by the investigation report (P-1), that his account of the June 18, 1983 incident was credible and accurate. I thereby **ADOPT** as **FINDINGS OF FACT** his description of the respondent's involvement in drug trafficking on June 18, 1983. I **FIND** that respondent was observed by Detective Paparone exchanging small glassine envelopes containing cocaine for unidentified sums of money. I **FIND** implausible respondent's story that the $596 found in his wallet was his vacation money, and not from the sale of drugs. It is inconceivable that respondent would "stand around" in a known drug trafficking area with almost $600 cash on his person which money respondent described as a "sweat money," i.e., earned through his employment. Further, at the hearing, Detective Paparone specifically identified respondent as being the same person he observed selling drugs on June 18, 1983. Respondent's testimony at the hearing was that he told the judge at the sentencing that he was guilty. That admission cannot be disregarded in the context of this administrative proceeding. Respondent's guilty plea when considered with Detective Paparone's clear testimony based upon his personal observations of the events of June 18, 1983, lead to the inevitable conclusion that respondent did exchange cocaine for unidentified sums of money (notwithstanding respondent's attempts to persuade me that he was innocent but he pled guilty on the advice of his attorney). The resolution of these disputed facts in favor of petitioner negatively impacts upon respondent's credibility and the issue of his rehabilitation.

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner raised the following arguments in support of its demand that respondent's casino hotel employee registration be revoked:

1. Respondent was arrested on very serious drug charges on two occasions within a one-week period, resulting in the entry of two guilty pleas to a

statutory disqualifying offense. N.J.S.A. 5:12-86c(3). The guilty pleas are res judicata and may not be relitigated.

2. The only issue then remaining is respondent's rehabilitation. Petitioner argues that respondent did not present clear and convincing evidence of his rehabilitation.

Respondent argued that he does not know what he will do if he loses his job since he has to support his family, pay rent, and meet the household bills, including automobile payments. Respondent was afforded the opportunity to present arguments as to his rehabilitation. However, respondent maintained his innocence throughout the hearing and alleged that he was singled out for arrest on June 18, 1983, because he was the only individual who had money on his person. No rehabilitative arguments were fostered.

I **CONCLUDE** that respondent was undisputedly convicted of a statutory disqualifying offense as a result of having pled guilty to two counts of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:19a(1). Notwithstanding that respondent continued to maintain his innocence during this hearing, a judgment of conviction is res judicata and cannot be relitigated in this proceeding. In the Matter of the Tenure Hearing of Orazio Tanelli, 194 N.J. Super. 492, 498 (App. Div. 1984).

Petitioner alleges that the respondent's indictments and guilty pleas are inimical to the Casino Control Act, thus warranting revocation of respondent's registration pursuant to N.J.S.A. 5:12-86c(4). It is unnecessary to address the issue of inimicality as it relates to the indictments and guilty pleas since I have already concluded that respondent was convicted of a statutory disqualifying offense, i.e., an offense which automatically results in disqualification, absent a demonstration of rehabilitation. Inimicality is an issue to be considered with regard to offenses other than statutory disqualifiers.

Respondent was afforded the opportunity to demonstrate his rehabilitation. Contrary to petitioner's arguments that rehabilitation must be demonstrated by clear and convincing evidence, N.J.S.A. 5:12-91d provides that no casino hotel employee registration shall be revoked on the basis of any statutory disqualifying offense if the registrant

has "affirmatively demonstrated his rehabilitation." The burden of proof is upon respondent to demonstrate his rehabilitation merely by the preponderance of the evidence. In determining whether or not a registrant has affirmatively demonstrated his rehabilitation, the following factors, pursuant to N.J.S.A. 5:12-91d, shall be considered:

(1) The nature and duties of the registrant's position;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the registrant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

Notwithstanding that respondent did not foster any arguments in pursuit of the rehabilitation issue, I have nevertheless examined all of the evidence presented by respondent in an attempt to determine whether respondent has rehabilitated himself. Through the introduction of exhibits R-1 through R-5 (which were undisputed by petitioner), I **CONCLUDE** that respondent has been an exemplary employee. However, I cannot overlook the fact that respondent was convicted of two very serious statutory disqualifying drug offenses. Also to be considered is Judge Neustadter's statement as to the reason for sentencing, which corroborates the serious nature of the offenses. While respondent is to be commended for staying out of trouble since the judgments of conviction were entered, I cannot overlook the fact that the offenses occurred only 15 months ago and that respondent is still on probation. Further, Detective Paparone's testimony did not suggest that this was a matter of entrapment or that respondent was coerced or pressured into selling the drugs, but rather, the detective's testimony revealed that respondent was unquestionably distributing and selling a controlled dangerous substance on June 18, 1983. I further do not find any evidence of social conditions which may have contributed to the offense and which would serve to mitigate against the

seriousness of the offense. The fact that respondent resided in a heavy drug trafficking area does not condone or excuse his behavior in any way. The offense was committed when respondent was 24 years old, an age when he should have been fully aware that he was committing a crime. Finally, the most disturbing aspect of this case is that notwithstanding the convincing testimony of Detective Paparone, which was supported by the police investigation report, and respondent's own admission of guilt at the sentencing, respondent still contends that he is innocent and that he was singled out for arrest because he was the only person in the stake-out area who had substantial money on his person. I, therefore, **CONCLUDE** that respondent has not demonstrated sufficient rehabilitation to meet the standard of N.J.S.A. 5:12-91d.

Respondent's testimony at this hearing that he is innocent of the charges for which he previously admitted guilt is contradictory to the meaning of rehabilitation. Implicit within the concept of rehabilitation is the ability to acknowledge one's guilt and to engage in corrective behavior to prevent similar incidents from occurring in the future.

Finally, petitioner seeks to revoke respondent's registration on the basis that the unprosecuted violations of N.J.S.A. 24:21-20(a)(1), i.e., possession of a controlled dangerous substance, warrant revocation pursuant to N.J.S.A. 5:12-86g. As with the issue of inimicality, it is unncessary to address the allegations that revocation is warranted pursuant to 5:12-86g since I have concluded that respondent was convicted of a statutory disqualifying offense for which he has failed to demonstrate rehabilitation.

I, therefore, **CONCLUDE** that respondent's undisputed conviction of two counts of a statutory disqualifying offense and his failure to demonstrate his rehabilitation warrant revocation of his casino hotel employee registration.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that respondent's casino hotel employee registration be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 21, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 25 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Atlantic City Police Department Investigation Report, dated June 18, 1983 (2 pages)

P-2 Indictment for: possession of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute in the matter of the State of New Jersey v. Herminio Nunez, and Judgment of Conviction, Indictment No. 7-828-83C (8 pages)

P-3 Indictment for possession of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute, and Judgment of Conviction in the matter of the State of New Jersey v. Herminio Nunez, Indictment No. 7-849-83-A (7 pages)

R-1 Letter, dated August 3, 1984, from Sol M. Borman, Supervisor, Steward Department, Resorts International (1 page)

R-2 Undated letter from Flavio Bacigalupo, Shift Supervisor

R-3 Letter, dated August 3, 1984, from Willie Hunter, Executive Steward, Resorts International Hotel

R-4 Letter, dated August 3, 1984, from Esteban Lopez, Shift Supervisor, Steward Department, Resorts International Hotel

R-5 Undated letter from Gary Crowder, Director of Support Services, Resorts International Hotel

LIST OF WITNESSES WHO TESTIFIED AT THE HEARING

For petitioner:

Detective Joseph Paparone

For respondent:

Hermino Nunez, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 83-16
OAL DOCKET NO. CCC 04557-83

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. PLAYBOY-ELSINORE ASSOCIATES, t/a PLAYBOY HOTEL AND CASINO OF ATLANTIC CITY; JOANNE MARIE ROGERS, CAGE MANAGER; CHRISTOPHER R. GIBBONS, CASINO COMPTROLLER; WILLARD C. HOWARD, JR., FORMER VICE PRESIDENT OF CASINO OPERATIONS; AND HENRY M. APPLEGATE, III, VICE PRESIDENT OF FINANCIAL SERVICES, Respondents.	AMENDED FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the stipulation of fact filed on December 29, 1983, in resolution of the complaint filed by the Division of Gaming Enforcement on January 18, 1983, alleging violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and Commission regulations, N.J.A.C. 19:45-1.1 et seq.; and the Commission, after carefully considering the entire record of the proceedings and the legal arguments of the parties, having resolved at its public meeting of October 10, 1984, to find certain violations and assess certain sanctions for the reasons set forth in a final Commission decision dated October 10, 1984,

IT IS on this 31st day of October 1984, ORDERED that the

findings of fact and conclusions of law as set forth in the final Commission decision in this matter dated October 10, 1984, which is incorporated herein by reference and made a part hereof, be and hereby are adopted by the Commission; and

IT IS FURTHER ORDERED that respondent Playboy-Elsinore Associates, now Elsinore Shore Associates, pay a civil penalty in the amount of $186,000, which penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Joanne Marie Rogers pay a civil penalty in the amount of $500, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Christopher R. Gibbons pay a civil penalty in the amount of $1,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Christopher R. Gibbons's casino key employee license be and hereby is suspended without pay for a period of seven days, beginning 12:01 a.m. on December 10, 1984, and ending at 11:59 p.m. on December 16, 1984; and

IT IS FURTHER ORDERED that respondent Willard C. Howard, Jr. pay a civil penalty in the amount of $5,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Henry M. Applegate, III, pay a civil penalty in the amount of $5,000, which sum is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that respondent Henry M. Applegate's casino key employee license be and hereby is suspended without pay for a period of fourteen days, beginning 12:01 a.m. on December 10, 1984, and ending at 11:59 p.m. on December 23, 1984, under the conditions as outlined in the Commission final decision in this matter; and

IT IS FURTHER ORDERED that copies of this final order be served upon the respondents and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

BY: Thomas N. Auriemma

THOMAS N. AURIEMMA
DEPUTY DIRECTOR
LEGAL DIVISION

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 83-16
OAL DOCKET NO. CCC 04557-83

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

PLAYBOY-ELSINORE ASSOCIATES, t/a PLAYBOY HOTEL AND CASINO OF ATLANTIC CITY; JOANNE MARIE ROGERS, CAGE MANAGER; CHRISTOPHER R. GIBBONS, CASINO COMPTROLLER; WILLARD C. HOWARD, JR., FORMER VICE-PRESIDENT OF CASINO OPERATIONS; AND HENRY M. APPLEGATE, III, VICE-PRESIDENT OF FINANCIAL SERVICES,

Respondents.

COMMISSION DECISION

APPEARANCES:

Marilu Marshall, Esq. for Respondents Playboy-Elsinore Associates, Joanne Marie Rogers, Christopher R. Gibbons and Henry M. Applegate, III

Steven R. Bolson, Esq. for Respondent Willard C. Howard, Jr.

Kevin F. O'Toole, Deputy Attorney General for Division of Gaming Enforcement

Dennis Daly, Senior Assistant Counsel
Nancy Q. Shickler, Assistant Counsel for New Jersey Casino Control Commission

The Division of Gaming Enforcement (DGE) filed a complaint

against respondents Playboy-Elsinore Associates,[1] Joanne Marie Rogers, Christopher R. Gibbons, Willard C. Howard, Jr., and Henry M. Applegate, III with the Commission on January 18, 1983. That complaint alleges that the respondents committed a number of violations of the Casino Control Act and Commission regulations in connection with a group of gamblers from Hong Kong ("Hong Kong group") which visited the Playboy casino during the period of August 12 to 15, 1982. A notice of defense and request for a hearing was filed on behalf of all respondents with exception of respondent Howard on February 24, 1983. Counsel on behalf of Mr. Howard filed a notice of defense and a hearing request on March 11, 1983. A prehearing conference was held before Hearing Commissioner Joel R. Jacobson on May 12, 1983. Thereafter, on June 15, 1983, the Commission transferred the matter to the Office of Administrative Law (OAL) for the conduct of a hearing.

In the OAL, all the respondents and the DGE agreed to a stipulation of facts. The parties made a motion for the Commission to recall the case from the OAL on November 15, 1983. That order was signed by Chairman Read on November 29, 1983, and the matter was thereafter returned to the Commission on December 29, 1983.

By letter dated February 16, 1984, the parties were asked to address several legal issues raised as a result of an initial

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1. On June 5, 1984, Playboy-Elsinore Associates changed its name to Elsinore Shore Associates. The casino licensee was not altered in any other respect.

review of the stipulation of the facts. The parties were also requested to brief the issue of the appropriate sanction(s). Marilu Marshall, Esq., counsel for all respondents except Howard, filed her letter brief on March 12, 1984. The DGE filed its brief on March 22, 1984. There has been no written response from counsel on behalf of Mr. Howard.

A second prehearing conference was held on April 17, 1984, in order to clarify certain factual issues raised by the stipulation of facts.

Oral argument of counsel for all respondents and the DGE on the appropriate sanction, if any, to be imposed was heard at the Commission's public meeting of September 12, 1984. In support of its contention that no sanction should be imposed under section 130, the respondents presented testimony from Robert Maxey, Chief Executive Officer of Elsinore.

FACTS

We accept the stipulation of facts filed by the parties on January 13, 1984. The essential facts for purposes of this decision are as follows. On the morning of August 11, 1982, Playboy management personnel, including respondents Rogers and Gibbons, were advised that a group of oriental gamblers known as the "Hong Kong group" were expected to arrive at the Playboy Hotel and Casino on the following day, August 12, 1982. In anticipation of their arrival, a meeting was held at approximately 8:30 p.m. on August 11, 1982, involving

respondents Howard and Rogers, as well as Jerry L. Cook, casino credit manager, Barry C. Rubinson, director of casino marketing, Howard S. Moskovitz, credit executive, and Su-Min (Frank) Hsu, casino host. Respondent Howard made contact with the Hong Kong group through a relative of Mr. Hsu and was informed by them that the group intended to present cash equivalents to be placed on safekeeping deposit at Playboy. Mr. Howard made arrangements to pick up copies of the checks to be presented so that they could be forwarded to credit clerks for verification in advance of the group's arrival. Respondent Rogers advised respondent Gibbons that copies of the checks would be arriving late that evening and would be verified by cage personnel the following morning, August 12, 1982.

Upon her arrival at Playboy on the afternoon of August 12, 1982, Rogers reviewed the copies of the checks and discovered that, in addition to bank checks, there were also cage disbursement checks from several Las Vegas casinos. She then contacted Gibbons and apprised him of this fact, questioning whether the casino checks were to be accepted as cash equivalents when presented. Gibbons then met with respondent Applegate, who was then vice-president of financial services, and expressed the same concerns. The matter was discussed between respondents Applegate and Howard and, afterwards, Applegate told Gibbons that the casino checks were to be accepted as cash equivalents if verified and authorized by the credit department. Gibbons so

advised Rogers, noting that acceptance was contingent upon the credit department's verification and authorization.

Ms. Rogers was approached at approximately 5:00 p.m. by Howard Moskovitz, casino credit executive, who inquired whether it was possible to use one of the meeting rooms in the casino hotel facility, known as the Margate Suite, for the arrival of the Hong Kong group and the processing of their safekeeping deposits. Mr. Moskovitz was concerned because of the large number of people in the Hong Kong group and the fact that they did not speak English. Rogers contacted Gibbons and "advised him that this would be done." (Stip. at para. 21). Casino cage personnel proceeded to the Margate Suite with safekeeping deposit documents which had been prepared in advance.

The Hong Kong group arrived at approximately 7:30 p.m. and was directed to the Margate Suite. Present at that time were respondents Howard and Rogers, Messrs. Cook, Moskovitz, Rubinson and Hsu, Carol A. White, executive casino host, Richard Dennis Yin, credit executive, various casino cage personnel and one security officer.

Seventy-five checks were presented by the Hong Kong group in the Margate Suite totalling $1.9 million. Of those checks, thirteen were drawn on cage disbursement accounts of various Las Vegas casinos. Moreover, five checks made payable to Tony Lau, tour escort, were accepted.[2] Furthermore, sixteen of the

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2. The DGE charged that the corporate respondent had violated the Casino Control Act and Commission regulations by accepting two checks as "cash equivalents" which were made payable to "Winston Y.C. Ming" and "Chan Wai-Ho, Anthony" in Count IV, paras. 24 and 25 of the amended complaint. As part of the stipulation of settlement, the DGE withdrew that allegation.

checks accepted had not been verified. Respondent Rogers was advised by Jerry Cook, credit manager, that the Hong Kong patrons would be allowed to gamble against the unverified checks.

The Hong Kong group gambled at Playboy from the evening of August 12, 1982, to August 15, 1982. The group then moved to the Sands to gamble until August 18, 1982. As part of the settling of the safekeeping deposits, the sixteen bank checks totalling $660,000, which had not been verified were returned to the Hong Kong group. In addition, eight Playboy-Elsinore Associates casino cage disbursement account checks were issued, all of them payable to Kam Yiu-Lau, one of the leaders of the group. Mr. Lau also requested reimbursement for the airfare for the entire group. Respondent Howard advised respondent Rogers that 43 members of the Hong Kong group would be reimbursed $1,800 each for airfare. Respondent Rogers issued a check payable to Kam Yiu-Lau in the amount of $77,400 for this purpose. The licensee acknowledges that it failed to report the $77,400 complimentary travel expense on either its daily complimentary service report to the DGE for August 1982 or its quarterly complimentary service report dated September 30, 1982, filed with the Casino Control Commission. It was reported among other items in the Playboy's statement of income as a casino expense in the quarterly report filed with the Commission for the quarter ending September 30, 1982, as well as the casino licensee's "complimentary services schedule" for the twelve-month period

ending December 31, 1982. (Exhibits K and L).

After the group's departure, cage personnel discovered that they had miscalculated the safekeeping deposit refund in the amount of $10,000. On August 16, 1982, respondent Howard contacted Kam Yiu Lau at the Sands Hotel and Casino, advised him of the miscalculation and requested that he return the overpayment. Cage personnel also contacted Playboy's depository bank, the First National Bank of South Jersey, and requested that a stop payment order be issued on Playboy check #0352 made payable to Kam Yiu Lau in the amount of $85,500. Mr. Lau had presented this check to the Sands on August 15, 1982, as a cash equivalent to be placed on deposit. To resolve this problem, Mr. Lau placed an additional $85,000 on deposit with Greate Bay for which he received a receipt. He then returned to Playboy where, in exchange for this receipt and an authorization for the return of the Playboy check to Playboy, he received $75,500. It appears that the stop payment order was issued too late and was ineffective. Greate Bay was paid the full $85,500 on the deposited check. On August 24, 1982, respondent Rogers appeared at the Sands casino cage, and, in exchange for the receipt issued to Mr. Lau and his letter authorizing release of the cancelled check to Playboy, she received a check made payable to Playboy-Elsinore Associates in the amount of $85,000. However, the complaint does not charge any violation of the Act or Commission regulations occurred as a result of this incident.

This case presents many of the same issues as were involved in State v. Greate Bay Hotel and Casino and Patricia DiGiacomo, Docket No. 83-17 (1984) (hereafter referred to as "the Sands case" or simply "Sands") which involved the same group of patrons. Hence, the disposition of this case is in large part controlled by our decision in the Sands case. We will therefore approach this case in a similar fashion, addressing each count of the complaint seriatim, although the determination of appropriate sanctions if any, will be reserved until after the merits vel non of the alleged violations are determined.

ACCEPTANCE OF CASH EQUIVALENTS OUTSIDE THE CAGE AREA (COUNT I)

The corporate respondent admits that it accepted $1.9 million in checks as cash equivalents outside the cage area from the Hong Kong group on August 12, 1982. (Stip. at 19).

In the Sands case we expressed at some length the seriousness with which we view the practice of conducting such transactions outside of the secured area known as the "cage". The thrust of that holding was that neither business interests nor consideration of patron convenience can supplant the statutory and regulatory constraints binding upon all casino licensees. The regulations are not unclear or vague on this point.

We find that the casino licensee violated N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.15(b), -1.24(a) and -1.25(e) in

accepting $1.9 million in checks as cash equivalents from the Hong Kong group in the Margate Suite.

FAILURE TO PROPERLY RECORD CUSTOMER DEPOSIT FORMS (COUNT II)

The corporate respondent admits that it failed to record accurately the nature of the patron safekeeping deposit received when it prepared 48 customer deposit receipts for the Hong Kong group. (Stip. at 19). On each customer deposit form, cage personnel were directed by respondent Joanne Rogers to indicate that cash was accepted from the group rather than cash equivalents. (Stip. at paras. 32-33). The corporate respondent indicates that "cash" was marked on the forms by cage personnel because they were unable to cross-reference check numbers and payees to the corresponding receipts in equal amounts in following the allocation system requested by the group.[3]

The result of the actions here was the obscuring of the audit trail for these customer deposits. As the Division notes in its brief, the documents at issue here provide no record of any checks having been received from the Hong Kong group. We agree that "[b]y preparing inaccurate and unreliable documentation there was a clear potential to cover up the true nature of the entire Hong Kong episode. Therein lies the enormous risk to the integrity of the regulatory process the violations of Count II created." (DGE brief at 23).

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3. The DGE has not alleged in this complaint that the so called "pooling procedure" which in part contributed to this violation was unlawful. We do not determine the propriety under the Act and regulations of such procedures. However, we are deeply concerned that the acceptance, pooling and redistribution of the Hong Kong group's safekeeping assets occurred without any written authorization by the members who originally held the funds. In fact, the inability of cage personnel to correlate the assets presented with the allocations requested by the group leader resulted in the improper recording of the transaction on the customer depos forms. However, as we stated at the outset, the Division ha not alleged that pooling practice is unlawful so that the we need not render a decision on that issue in this case.

Consistent with our determination in Sands, we find that the corporate respondent has committed 48 violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(h)(5).

FAILURE TO VERIFY CASH EQUIVALENTS (COUNT III)

The corporate respondent admits that it accepted 16 checks as cash equivalents without verifying the validity of those checks prior to their acceptance in violation of N.J.A.C. 19:45-1.25(e). It appears that Playboy had a procedure in place in which it would call the issuing bank to confirm the issuance of the check to the patron involved prior to permitting the patron to gamble against such funds. In fact, the majority of the checks accepted were verified in this manner by use of photocopies provided to casino personnel the day before the arrival of the group. The 16 checks at issue in this Count of the complaint were not among the copies provided to the casino licensee. Although the checks were returned to the gamblers at the time they reconciled their accounts and left Playboy on August 15, 1982, those funds were made available to them to gamble against during their stay at Playboy.

Because of the corporate respondent's admission on this issue, it is not necessary for the Commission to interpret N.J.A.C. 19:45-1.25(e) to outline what verification procedures

would have been necessary under the circumstances in this case. We find that the corporate respondent breached N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.25(e) in failing to verify 16 cash equivalents prior to their acceptance.

ACCEPTANCE OF NON-CONFORMING INSTRUMENTS (COUNT IV)

There are two distinct charges made in this Count of the complaint. The first concerns the 13 checks which the corporate respondent admits it accepted as "cash equivalents" that were drawn on accounts of various Las Vegas casinos constituting violations of N.J.S.A. 5:12-99, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). It is evident from the factual stipulation that casino management was aware that the Hong Kong group intended to present casino checks to be placed on deposit as cash equivalents, and further they were aware that such checks did not fit within the definition of cash equivalent as defined by N.J.A.C. 19:45-1.1. See Stipulation at paragraphs 15-18.

Again, we have already dealt with this issue in the Sands decision. We there held that the acceptance of 26 non-conforming checks worth a total of $1,348,650 was essentially a loan from

the casino to the patrons, a practice that is unambiguously condemned by section 101 of the Casino Control Act. N.J.S.A. 5:12-101. See also N.J.A.C. 19:45-1.24(a). By the same token the record here establishes that the corporate respondent committed 13 violations of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a). Moreover, the decision to take this action in contravention of the statute and Commission regulations was made at a meeting of high-level management personnel, specifically, the vice-president of financial services (Applegate) and the vice-president of casino operations (Howard). Such a circumstance warrants special consideration in the penalty phase of this decision.

The second aspect of this count concerns the five additional checks which the DGE alleges were accepted in violation of sections 101 and 99, and N.J.A.C. 19:45-1.24 when the corporate respondent accepted five checks made payable to Tony Lau totalling $280,000. This presents an issue not decided in the Sands case. While similar checks made payable to Mr. Lau were presented to the Sands, the corporate respondent in that case stipulated that such checks were non-conforming and therefore violative of the Act and pertinent Commission regulations. Here, however, we have no such stipulation. The issue then is one of first impression. For reasons hereafter stated, we find that the five checks in question do not conform to the definition of cash equivalent because they are not made

payable to the casino licensee, "bearer" or "cash" and the instrument is neither a certified check, cashier's check, treasurer's check, recognized traveler's check, recognized money order or recognized credit card.

Section 101(a) contains a broad prohibition relating to the extension of credit and check cashing. The ensuing subsections contain several exceptions to the general prohibition, but nevertheless impose strict conditions on advancing credit and cashing checks to facilitate gambling. See Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598, 603 (App. Div. 1981). One of those exceptions, Section 101(b), provides that:

> Nothing in this subsection shall be deemed to preclude the establishment of an account by any person with a casino licensee by a deposit of cash or recognized traveler's check or other cash equivalent, or to preclude the withdrawal, either in whole or in part, of any amount contained in such account. [Emphasis added.]

In keeping with the Legislature's imposition of strict controls over credit for gaming purposes (Salomone, supra. at 607), we have strictly defined and interpreted the exceptions and imposed detailed regulations where necessary. See N.J.A.C. 19:45-1.25, -1.26, -1.27, -1.28 and -1.29; In the Matter of the Petition of Boardwalk Regency Corporation to Amend N.J.A.C. 19:45-1.1 (order dated November 15, 1982). See also State v. Comdata Network, Inc., Docket No. 80-CSI-1 & 2 (1981).

Four of the checks made payable to Tony Lau were issued by the Hang Lung Bank Ltd. drawn upon its corresponding or commercial account at Irving Trust Company in New York. The remaining check was issued by Hang Lung Bank Ltd. on its commercial or corresponding bank account at Bank of America in San Francisco, California. This kind of check on which the bank is the drawer and a second bank is the drawee is known as a bank check. White & Summers, Handbook of the Law Under the Uniform Commercial Code, §17-5 (1972) at 578.

The list of instruments to be considered cash equivalents in N.J.A.C. 19:45-1.1 does not include bank checks. Moreover, there are distinctions between bank checks and the instruments contained in the cash equivalent definition which mitigate against a finding that they should be included within that list of instruments acceptable as cash equivalents. The instruments presently included within the Commission regulation are generally recognized as being substitutes for cash. These instruments are as liquid as cash because they represent guaranteed obligations of the bank or other financial institution rather than that of an individual or non-financial entity. At least one court in New Jersey has noted a distinction between cashier's checks, one of the instruments designated in the definition, and bank checks. The court states:

> ...a bank check is, in effect, an ordinary check since it is not accepted when issued and may be dishonored by the bank upon which it is drawn when it is presented for payment. National Newark & Essex Bank v. Giordano, III N.J. Super. 347, 352 (Law Div. 1970).

Since bank checks are not accepted upon issuance and do not represent guaranteed obligations of the bank they do not provide any of the protections of a cashier's check. Thus, a bank check offers no more protection at law than an ordinary personal check. The holder of a bank check, other than a certified check, has no recourse against the drawee bank when that bank wrongfully dishonors the instrument. N.J.S.A. 12A:3-409. The only recourse of the holder of the bank check is against the drawer. With regard to the five checks at issue here, the only legal action the casino could institute on a dishonored check would be against the drawer bank, Hang Lung Bank Ltd. There would not be any action available by the casino against the American banks. Of course, if the drawer bank refuses payment based upon a forged endorsement, the casino would have an action against the forger. N.J.S.A. 2A:3-419(2). Thus, we hold that bank checks are not cash equivalents within the definition of N.J.A.C. 19:45-1.1.

There is yet another feature about these five checks that requires discussion. Cash equivalents under Commission regulations are required to be made payable to the casino licensee, "bearer" or "cash." The DGE suggests in its brief that a check which is endorsed in blank by the payee is converted into "bearer paper." Under this analysis a check which is made

payable to the patron and endorsed in blank becomes a check made payable to bearer and, absent any other deficiency, would comport with the definition of cash equivalent.

We understand that casino licensees have been operating under the assumption that this interpretation is correct. We now hold to the contrary.

The reasons for our strict construction of the statute and regulation in this area were stated at the outset. We perceive a crucial difference between a conforming cash equivalent instrument made payable to "bearer" and one which is converted to a bearer instrument by virtue of the endorsement in blank by the payee. That difference is the effect of a forged endorsement on the validity of the instrument. For example, a cashier's check made payable to "cash" or "bearer" does not require an endorsement to negotiate the instrument. On such instruments even a forged endorsement will not restrict its negotiability. Similarly, there is no endorsement necessary on a cash equivalent made payable to the casino, and the original drawee bank would have no defense against a cashier's check properly signed by a bank officer but stolen from the original remitter.

However, under the Uniform Commerical Code, a forged signature cannot legally bind the person whose name is forged

unless that person ratifies the forger's endorsement. N.J.S.A. 12:3-404(1). The possessor of such an instrument has no right to enforce payment by any party to the check. Santos v. First National State Bank of New Jersey, 186 N.J.Super. 52, 72 (App. Div. 1982). Further, if a party mistakenly pays a check with a forged endorsement, that party can collect against the person who first cashed the check. See N.J.S.A. 12A:3-419; Brady on Bank Checks (4 Ed. Bailey, 1969), §15.10 at 46. In short, requiring the endorsement of a patron in order to convert a check made payable to a patron to a "bearer" check involves more risk than accepting a check made payable to the casino licensee, "cash" or "bearer." Under our strict limitiations on cash equivalent transactions, failing a change in the regulation or statute, we reject the practice of accepting otherwise valid cash equivalent instruments made payable to a specified payee and endorsed in blank as cash equivalents pursuant to N.J.A.C. 19:45-1.1.

Therefore, we find that the acceptance of five bank checks payable to Tony Lau was in violation of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.1 and 1.24(a).

FAILURE TO REPORT COMPLIMENTARY SERVICES TO THE REGULATORY AUTHORITIES (COUNT V)

The casino licensee admits that it failed to report the $77,400.00 payment to the Hong Kong group for complimentary

airfare reimbursement to the DGE as part of the daily complimentary services report required by N.J.A.C. 19:45-1.2(c)(3). (Stip. at 21). Further, it admits that it failed to include this expense in its quarterly complimentary service report to the Commission as required by N.J.A.C. 19:45-1.9(c)(1). Ibid. The airfare reimbursement was included in Playboy's statement of income as a casino expense in the quarterly report filed with the Commission. (Stip. at para. 46).

As we stated in Sands, failure to keep the Commission and Division apprised of complimentaries through existing reporting requirements undermines the regulatory and enforcement functions of the agencies. Effective monitoring over junket and complimentary services mandates that these reports be filed. There is no indication that the corporate respondent attempted to comply with the reporting requirements. We deem it to be a very serious violation of N.J.A.C. 19:45-1.2(c)(3) and -1.9(c)(1).

PENALTY DETERMINATION

Section 129 provides the Commission with a variety of sanctions available to it that may be imposed for violations of Act and regulations. These include the revocation or suspension of a casino's license or certificate of operation; restitution or cease and desist orders; issuance letters of reprimand or censure and the imposition of monetary civil penalties. Moreover, these penalties may be imposed individually or in combination. It is

evident that the Legislature wished to empower the Commission with wide discretion regarding the enforcement of the Act. "Of paramount importance is a need for flexible civil sanctions. The Commission should be clearly empowered to devise the remedy best suited to the offense. To this end, there should be emphasis on alternative or cumulative sanctions." Second Interim Report, Staff Policy Group on Casino Gambling, (February 17, 1977) at 54. The Commission's power concerning monetary penalties was specifically considered:

> Regarding monetary penalties, the Commission should be empowered to pose a range of fines; however, it must be emphasized that penalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing business in this State. Furthermore, the Commission should be empowered to levy a monetary fine in lieu of more drastic action. A monetary penalty of sufficient magnitude would provide the desired deterent effect and should also provide a stimulus for effective completion of any disciplinary proceedings. [Id. at 54-55].

The Act also provides standards that we are required to consider in determining the appropriate sanction in any disciplinary action brought before us. Those standards include:

> a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrants;
> b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
> c. Any justification or excuse by the licensee or registrant;
> d. Prior history of the particular licensee or registrant involved with respect to gaming activity;

e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. [N.J.S.A. 5:12-130].

These standards incorporate some of the traditional goals adopted by society for imposing sanctions for misconduct. Though there are obvious limits to the analogy, some reference to concepts developed in the field of criminal law is appropriate. Four goals have often been articulated to justify punishment: retribution, deterrence, both of the offender and others, rehabilitation of the offender and protection of the public through isolation of the offender. See e.g., State v. Ivan, 33 N.J. 197, 199 (1960). Incarceration and rehabilitation have little or no relevence in this administrative context. However, retribution and deterrence are both articulated in the statute, specifically in section 129(5) which provides for civil penalties "to punish misconduct and to deter future violations...." These aims work in conjunction with the overall purposes of the Casino Control Act and, in particular, the maintenance of the public confidence and trust in the credibility and integrity of the regulatory process and casino operations. The relationship between the need to punish misconduct appropriately and the maintenance of the public's trust in the integrity of the regulatory process is evident. Particularly in a highly sensitive industry such as gaming, breaches of the law mandate an

equally severe rebuke. Lesser penalties would depreciate the seriousness of the breach. Cf, United States v. Bergman, 416 F.Supp. 496 (S.D.N.Y. 1976), M.P.C. §7.01(1)(c). However, such "just desserts" will always be tempered by the idea of blame-worthiness, recompense and proportionality. United States v. Bergman, supra at 500.

Deterrence is not limited to its effect upon the respondent alone. It is directed also to those who may follow thereafter. State. v. Ivan, supra at 202. The deterrent effect on others is a significant aid to the regulators of casino gaming as it is in the field of criminal law.

The corporate respondent, through the testimony of Robert Maxey, has raised other considerations for the Commission to weigh in determining the proper sanction in this case. He has argued against any sanction for misconduct, contending "there is not one thing that this licensee can do differently than it has already done and which it began to do prior to any knowledge that this problem even existed." (T227-24 to T228-2)[4] This argument may mitigate the severity of a sanction but does not obviate the need for punishment.

Mr. Maxey also questioned the significance of any deterrent effect within the casino industry by the application of sanctions against the corporate respondent. He indicated that in

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4 "T" refers to the transcript of the public meeting of the Commission on September 12, 1984.

the face of severe sanctions, casino personnel might be more inclined to hinder an investigation or conceal actions and violations of the Act and regulations. We would hope that Mr. Maxey, and all other persons required to meet the exacting qualifications of casino key employee licensees, are well aware of the continuing duty imposed upon all licensees, registrants and qualifiers under the Casino Control Act to cooperate with and provide any assistance required by the Commission and the Division, as well as to inform the regulatory authorities of any acts which they believe constitute a violation of the Casino Control Act. N.J.S.A. 5:12-80(d) and (g). Any action in conscious derogation of this duty would be dealt with most severely by this Commission.

Mr. Maxey also argued that the corporate licensee has done everything it can do to remedy the situation and that it did so willingly and to its own economic detriment. On cross examination by the DGE attorney, he acknowledged that the changes were made in order for the casino licensee to function properly. As we stated earlier, remedial efforts are recognized in the determination of the proper sanction. However, participation in casino operations as a licensee is a revocable privilege and is conditioned upon the "proper and continued qualification of the individual licensee...and upon the discharge of the affirmative responsibility of each such licensee...to provide...any assistance and information necessary to assure that the policies declared by the Act are achieved." N.J.S.A. 5:12-1(8). If the

licensee does not continue to operate properly, at whatever economic cost, it cannot continue to hold a license.

With these considerations in mind, we have weighed the proper penalty to be imposed against the corporate respondent. They are as follows.

1. Count I - Acceptance of Cash Equivalents.

This is an extremely serious violation. A multi-million dollar transaction took place in an unsecured, unmonitored hotel suite, with no attempt to notify or involve the regulatory agencies ordinarily present. There is very little if anything to distinguish this case from the Sands matter. The conduct of the corporate respondent here is no less serious than that taken by the Sands personnel. It merits an equally severe sanction. Consistent with the Commission's analysis in the Sands case, the acceptance of the checks in the hotel suite is deemed to be one violation. We assess a $50,000 civil penalty against the corporate respondent for acceptance of the Hong Kong group's funds as a cash equivalent deposit in the Margate Suite.

2. Count II - Customer Deposit Forms.

Again, the facts and circumstances of this case are virtually identical to those in the Sands case. The effect of inaccurately describing the transactions on the customer deposit forms was to obscure if not conceal the entire transaction which took place in the Margate Suite. Moreover, the inaccurate

records are responsible, in part, for the problems encountered later when the casino sought to refund the proper amount of money to the Hong Kong group. Consistent with the Sands case, we find that each form that was inaccurately prepared constitutes a separate and distinct violation under the statute and regulations. Therefore, we assess a civil penalty of $1,000 per violation for 48 violations in the preparation of 48 inaccurate customer deposit forms. The total fine for the violations assessed under Count II is $48,000.

3. Count III - Cash Equivalent Verification.

Although a serious attempt was made to verify the checks to be offered as cash equivalents, the corporate respondent nevertheless accepted 16 checks worth $660,000, and made no attempt at prior verification of them as required by the Act and Commission regulations. We acknowledge the effort to verify as many checks as possible. To the extent that compliance with the law is laudatory, the personnel involved are to be congratulated. However, in a strictly regulated industry, compliance is required and therefore expected. We therefore conclude that a penalty of $1,000 per violation, the same as that imposed upon the Sands for identical violations, is the appropriate penalty.

4. Count IV - Acceptance of Nonconforming Instruments.

The corporate respondent accepted 13 checks drawn on accounts at various Las Vegas casinos in violation of section 101

of the Act. Acceptance of each of these checks is a separate and distinct violation. The decision to accept these checks was a conscious and deliberate one on the part of the management level employees for whose conduct the corporate respondent is responsible. In the Sands case, similar violations were sanctioned at the rate of $3,000 per check. However, considering the positions of the personnel and the deliberate nature of the action taken, we believe that a more stringent sanction should be assessed against the corporate respondent here. Therefore, for the acceptance of 13 casino checks, a civil penalty of $4,000 per violation will be assessed.

We have also found that the acceptance of the five bank checks made payable to Mr. Lau was improper because bank checks, as defined earlier in this opinion, are not included within the types of instruments set forth in N.J.A.C. 19:45-1.1, and further because such checks were not made payable to the casino licensee, bearer or cash. An endorsement in blank is insufficient to convert an instrument to bearer paper for purposes of the regulation at issue. Nevertheless, in view of the near universal misconceptions among the industry and the regulators on this issue, we find it inappropriate to impose any sanction for these violations. See N.J.A.C. 5:12-130(b) and (c).

5. Count V - Complimentary Reports.

Such failures tend to preclude or at least hinder the essential regulatory functions of both the Commission and the

Division of Gaming Enforcement. Any violation which undermines valid law enforcement and regulatory purposes merits a harsh sanction. Accordingly, we assess a $10,000 civil penalty against the corporate respondent for violating N.J.A.C. 19:45-1.2(c)(3) and an additional $10,000 for violating N.J.A.C. 19:45-1.2(9)(c)(1).

LIABILITY OF INDIVIDUAL RESPONDENTS

1. Joanne Marie Rogers

Ms. Rogers was employed at the time of the incident as the casino cage manager and licensed as a casino key employee. As cage manager she was responsible for the control, accounting and reporting of all casino cage transactions. As we noted in the Sands case, the person who holds the position of casino cage manager is required to have extensive casino industry experience and a thorough knowledge of the Casino Control Act and regulations that relate to casino operations and internal controls. She is expected to maintain compliance with the Act and regulations and monitor those within her authority in doing the same. It is evident from the Stipulation of Facts that respondent Rogers had a crucial role in the failure of the cage to comply with accounting and internal control procedures in the acceptance of the checks from the Hong Kong group. It is also evident that Ms. Rogers sought the advice and authority of her superiors before taking crucial steps in this episode. For example, when reviewing copies of the checks to be presented by

the Hong Kong group, respondent Rogers discovered that cage disbursement checks from Las Vegas casinos were included among the proffered checks. She contacted respondent Gibbons, the casino controller, who, after consultation with other members of casino management, directed Rogers to accept the cage disbursement contingent upon phone contact and verification with each credit department of those casinos.

It is unclear from the Stipulation whether respondent Rogers, at the request of a casino executive, made the decision to transfer cage personnel up to the Margate Suite. The Stipulation indicates that respondent Rogers again contacted her superior, respondent Gibbons, and "advised him that this would be done." (Stip. at para. 21).

Ms. Rogers was the highest ranking cage officer in the Margate Suite at the time the checks were accepted. It was under her instructions that cage personnel prepared the customer deposit receipts which did not accurately describe the transactions. Respondent Rogers acknowledged that she instructed the cage cashiers to circle "cash" because of the inability to cross-reference check numbers and payees to the corresponding check receipts in equal amounts. (Stip. at para. 33). She advised her superior of this procedure after the preparation of the customer deposit forms was completed.

As cage manager, it is respondent Rogers's responsibility to determine whether a cash equivalent has been verified and may be accepted by the casino. Upon acceptance, a patron may gamble against that cash deposit. N.J.A.C. 19:45-1.25. When presented with sixteen unverified checks in the Margate Suite, respondent Rogers did not exercise her authority in rejecting those checks prior to verification but rather sought the direction of Jerry Cook, credit manager, as to whether the patrons would be allowed to gamble against those sixteen checks. This indicates some confusion in respondent Rogers's judgment as to who has the authority to authorize gambling against cash deposits. For the casino credit manager to make that decision is clearly an incompatible function.

It is evident from the record that respondent Rogers was directed by her superiors to take actions which constituted the violations in this complaint. However, she cannot be absolved from all responsibility. Casino key employees have an obligation to abide by their responsibilities as licensees as well as achieving the monitoring aims of the corporate employer. We are also aware that respondent Rogers is not currently employed in the casino industry in Atlantic City. Upon consideration of all the above circumstances, we assess a $500 civil penalty against Ms. Rogers.

2. Christopher R. Gibbons

At the time of the violations, respondent Gibbons was casino controller and a key licensee. He supervised all cage and

internal control functions as well as other financial aspects of the corporate respondent. Within the corporate structure, he was respondent Roger's immediate supervisor.

On August 12, 1982, respondent Gibbons was advised of the inclusion of sixteen cash disbursement checks from Las Vegas casinos among the group of checks to be presented by the Hong Kong group. He discussed this problem with his supervisor, respondent Applegate. Gibbons was advised by Applegate to accept the casino checks as cash equivalents if verified and authorized by the Las Vegas casino credit departments. Respondent Gibbons so advised Joanne Rogers.

Respondent Gibbons was also aware that respondent Rogers had removed the cage functions up to the Margate Suite and was advised that cage personnel had inaccurately recorded the safekeeping deposits received in the suite. He was not present in the Margate Suite during these transactions and there is no indication in this record that he was advised that sixteen checks were accepted prior to verification by cage personnel.

Respondent Gibbons is a high ranking financial officer within the corporate structure of the casino licensee. As such, he must be held to a high degree of responsibility. It appears from the record that at least on one occasion he requested guidance from his superior and was told to take actions which

resulted in a violation of the statute. When advised that his subordinate was involved in activities contrary to the regulatory structure, he took no action to correct or remedy the situation. Such disregard for the regulatory system is unacceptable.

In our view a suspension of respondent Gibbon's casino key employee license for seven days and a $1,000 civil penalty are appropriate. During the period of suspension, Mr. Gibbons shall not engage in any activities for which a license or registration is required. For this time period, he may not receive any renumeration from his employer, including salary, vacation or sick leave, nor be compensated in any other manner. We so order.

3. Henry M. Applegate, III

At the time encompassed by the complaint, respondent Applegate was vice president of financial services of the corporate respondent. His responsibilities included the monitoring of all financial aspects of the corporation including both the hotel and casino cage functions. He is the highest ranking financial officer named in the complaint.

From the stipulated facts, it is apparent that Mr. Applegate made the decision to accept thirteen casino checks as cash equivalents in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25. There is no evidence that he was made aware of subsequent violations involving cage personnel. However, all of these functions were under his authority by virtue of his position. The Division argues in its complaint that through his supervising authority, respondent Applegate should be held accountable for these violations. We agree.

Respondent Applegate was involved in the initial stages of the visit of the Hong Kong group. He made the decision to accept checks from them in violation of section 101. From his actions, explicitly or implicitly, came the message to accommodate these gamblers without regard to the regulatory restraints.

To sanction this conduct, we suspend respondent Applegate's casino key employee license for a period of 14 days and assess a civil penalty of $5,000. Mr. Applegate is subject to the same restrictions outlined with reference to Mr. Gibbons during his suspension period. However, we must take note that Mr. Applegate is no longer employed by the corporate respondent. Rather, he is now employed by another casino licensee, Golden Nugget Operating Company (GNOC). While it is not our intention to visit any harm upon GNOC, some disruption of its normal operation may be anticipated by the temporary loss of a high-level management official such as Applegate. As is the case when any employee credential is suspended, Mr. Applegate will not be permitted to perform any function for which a valid license is required. However, should GNOC encounter a situation where information of which Mr. Applegate is the sole repository is needed, or some other emergent situation arises, GNOC personnel may contact Mr. Applegate during the period of his suspension to secure such information as they may require. However, if such contact is made, the conversation must be memorialized in writing and made available for inspection by the DGE and the Commission upon request.

4. Willard C. Howard

At the time of the events cited in the complaint, respondent Howard was vice president of casino operations and the holder of a casino key employee license. Mr. Howard's functions related to casino gaming operations and he had no authority under Commission regulations over any cage function.

Mr. Howard's active participation throughout the transgressions at issue here is established in the record. He arranged to have copies of the Hong Kong group's checks transmitted to the cage for verification prior to the Hong Kong group's arrival. He, along with respondent Applegate, made the decision to accept the cash disbursement checks from the Las Vegas casinos. He was the highest ranking member of casino management present in the Margate Suite when the highly irregular transactions described above occurred.

Presently, Mr. Howard is not employed at any operating casino in Atlantic City. In view of all the circumstances, we find that a $5,000 civil penalty is an appropriate sanction to impose against respondent Howard, and we so order.

CONCLUSION

Based upon our findings and conclusions as set forth above, the Commission assesses civil fines against the corporate respondent totalling $186,000 for the violations charged in counts I-V. The individual respondents are sanctioned in the following manner: Joanne Marie Rogers - $500 civil penalty; Christopher R. Gibbons - seven-day suspension and a $1,000

Applegate, III - fourteen-day suspension and a $5,000 penalty; and Willard C. Howard - $5,000 penalty.

WALTER N. READ

DON M. THOMAS

CARL ZEITZ

E. KENNETH BURDGE

Commissioners Thomas and Zeitz respectfully dissent to the penalties imposed on respondents Applegate and Howard.

DATED: October 10, 1984

SEPARATE OPINION OF COMMISSIONER JOEL R. JACOBSON

Initially, I join with the majority of the Commission in its findings of facts and conclusions of law in this case. I am in complete agreement with the findings and sanctions to be imposed upon Joanne Marie Rodgers, casino cage manager, Christopher Gibbons, casino controller, Willard C. Howard, former vice president of casino operations, and Henry M. Applegate, III, vice president of financial services. However, I am of the opinion that the penalty levied against the casino licensee is inadequate to deter future violations by it or any other casino licensee in Atlantic City.

As has already been indicated, this case is quite similar to the case previously decided by the Commission entitled State v. Greate Bay Hotel and Casino Inc. and Patricia DiGiacomo, which I will refer to hereafter as the Sands case. Both cases involve the same group of patrons and the same types of regulatory violations.

In the Sands case, the casino licensee accepted 48 checks totalling approximately $2.6 million and some $300,000 in U.S. currency outside of the security of the cashiers' cage in a fourth floor conference room. Here, Playboy-Elsinore accepted 75 checks totalling approximately $1.9 million outside of its cage in the Margate Suite.

In the Sands case, cage personnel failed to properly record the nature of 32 customer deposit receipts; here, Playboy failed to record 48 of such receipts.

In the Sands case, twenty-two checks were accepted as cash equivalents without being verified prior to acceptance; here, 16 checks were accepted by Playboy without proper verification.

In the Sands case, 26 checks were accepted as cash equivalents that did not comport with the requirements of a cash equivalent; here 18 such checks were accepted by Playboy.

In the Sands case, travel reimbursements made to the "Hong Kong" group totalling $325,000 were not reported to the Commission and Division as required. Here, Playboy failed to report $77,400 in travel reimbursements paid to the same group.

Although as this brief comparison indicates, both casino licensees, in the two cases, are guilty of the same types of regulatory violations, the most distressing similarity between the two cases is the total disregard for regulatory requirements that occurred in order to foster the licensee's business interests. When a choice had to be made between complying with the regulatory requirements imposed by this State and the perceived pecuniary benefits that could be derived from violating those requirements, both casino licensees came to the same conclusion--the requirements and regulatory control of this State were expendable.

As I stated in dissenting to the penalty imposed by the majority in the Sands case, "...[f]inancial penalties, easily computed by casino managers as a cost of doing business, do not serve as an effective deterrent to continued violations." "[W]here compliance with regulatory structure is concerned, the only way to close their fiscally-focused eye is to close the casino's door." (Sands, Dissent at 4).

When, as in the present case, high executive officials, such as the casino controller and vice president of financial services, are willing to make regulatory compliance subordinate to pecuniary gain, there is no question that the attitude of the casino licensee, itself, toward complying with the requirements of this State is clearly implicated. In my view, the only method of changing this attitude, of assuring that the authority of this State is clearly recognized and of deterring future violations of this kind is to sanction the casino licensee beyond the mere imposition of additional costs. This Commission should demonstrate to the casino industry that the requirements of this State are paramount; that casino gambling was not authorized for the exclusive pecuniary benefit of those who own and operate these facilities; and that the casino license they hold is a privilege conditioned on their willingness and ability to operate under strict and rigorous regulatory control.

In my estimation, the one way in which these lessons can be learned by an industry motivated by greed is for the Commission to remove any possibility of pecuniary gain that can be derived from the violation of the restrictions imposed by this State. As I indicated in the Sands case, monetary penalties simply do not assure that result. Instead, this Commission should order the casino closed for at least 24 hours. During this period, all casino personnel shall report to their regular shifts, at which time management shall review with them the requirements of the Casino Control Act and the Commission regulations, emphasizing the need for compliance with these

requirements.

While I also agree with the comments made by the majority in response to Mr. Maxey's testimony, I would like to offer an additional comment about his approach.

Periodically, Mr. Maxey responds to some compulsion to lecture both the Division of Gaming Enforcement and the Casino Control Commission on how to perform their jobs. As he offers his persistent criticisms, it becomes obvious that Mr. Maxey's problems are more geographic than substantive. He, obviously, has difficulty in understanding how regulatory climate can be affected by latitude and longitude.

The reality is that Mr. Maxey now happens to be in, not Nevada, but New Jersey, where "machismo" is not sufficiently terrifying to compel a state-imposed collapse of vigorous regulatory authority.

In my opinion, this sanction addresses the underlying causes of the violations at issue here. These types of violations will cease "only when employees of the casinos are made aware of the overriding regulatory concerns [and of] their individual responsibilities." (Sands, Dissent at 4).

JOEL R. JACOBSON
COMMISSIONER

DATED: October 10, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-248
REGISTRATION NO. 50204-40
OAL DOCKET NO. CCC 7562-84

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

RUBEN E. PLAZA

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 5, 1985;

IT IS on this 12th day of JULY 1985, ORDERED that the initial decision is modified as follows:

> The conclusion stated at p. 5 that "respondent has violated section 86(g) of the [Casino Control] Act based upon [his] admission that he committed credit card fraud in violation of N.J.S.A. 2C:21-6e(1)" is rejected. Credit card fraud (fourth degree) contrary to N.J.S.A. 2C:21-6e(1) is not an automatic disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1), (2) or (3). Nevertheless, in the circumstances presented, such conduct constitutes an inimical offense and the respondent is disqualified from casino hotel employee registration pursuant to N.J.S.A. 5:12-86(c)(4) and(g).

IT IS FURTHER ORDERED that the casino hotel employee registration of Ruben E. Plaza is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Ruben E. Plaza is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Ruben E. Plaza, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7562-84

AGENCY DKT. NO. 84-248

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

RUBEN E. PLAZA,

Respondent.

Joanne Cocchiola, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Harold U. Johnson, Esq., for respondent

Record Closed: January 16, 1985 Decided: March 4, 1985

BEFORE **VALERIE H. ARMSTRONG,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On August 2, 1984, the Division of Gaming Enforcement (Division) filed a complaint seeking revocation of respondent's casino hotel employee registration as a result of respondent having been charged on September 22, 1983 with credit card fraud in violation of N.J.S.A. 2C:21-6e(1).

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A prehearing order was entered by Administrative Law Judge Richard L. Voliva, Jr. on December 20, 1984, which defined the following issues to be addressed at the hearing:

1. Whether respondent's registration should be revoked pursuant to N.J.S.A. 5:12-91b which provides that the "Commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86. . ." of the Casino Control Act (Act).

2. Whether pursuant to section 86g of the Act, respondent's conduct violates section 86c(1) of the Act, due to his alleged commission of a statutory disqualifying offense (N.J.S.A. 2C:21-6e(1)), notwithstanding that he was not prosecuted for the conduct, having been accepted into the Atlantic County Pre-Trial Intervention Program.

3. Whether respondent's conduct as it relates to the charges of credit card fraud renders his registration inimical to the policies of the Act pursuant to section 86c(4).

4. In the event that the Division establishes that respondent has committed a statutory disqualifying offense, respondent shall have the opportunity to affirmatively demonstrate his rehabilitation pursuant to section 91d of the Act.

A hearing was held in Egg Harbor Township, New Jersey, on January 8, 1985. The record remained open until January 16, 1985, in order to permit respondent the opportunity to submit additional documentation which was unavailable at the hearing.

FACTUAL FINDINGS

The facts in this matter are undisputed.

The parties stipulated to the facts set forth in the New Jersey State Police Investigation Report dated August 31, 1983 (P-1, pages 1 through 8). The parties also stipulated to the facts set forth in the statement of Hector Ruiz, dated September 22, 1983 (P-2).

On April 2, 1982, respondent commenced working at Hanover Shoe Store in Atlantic City, New Jersey, as the store manager, having been transferred to Atlantic City from his previous employment as assistant manager for a Hanover Shoe Store located in Wichita, Kansas. In August 1982, respondent and Hector Ruiz (an employee working under respondent's supervision), engaged in a fraudulent credit card scheme during their employment at Hanover Shoe Store. The scheme involved a continuing course of conduct over an approximate one-year period (P-1). Respondent and Mr. Ruiz developed a procedure whereby they knowingly permitted customers to utilize stolen credit cards to charge the purchase of several pairs of shoes. The customer would keep some of the shoes, while respondent and Mr. Ruiz retained the other pairs of shoes at the store. They prepared a refund slip for the shoes that they retained. Since Hanover Shoe Store permitted cash refunds, respondent and Mr. Ruiz would then divide the refund money between themselves. It would appear, however, as though the customer was receiving the refund money back for a pair of shoes that he allegedly purchased and returned.

On July 22, 1983 Detective Mark Emmer who has been employed by the New Jersey State Police for approximately twelve and one-half years was contacted by a special investigator for Chase Manhattan Bank with regard to a suspected fraud being perpetrated by the Atlantic City Hanover Shoe Store. On July 26, 1983, Detective Emmer and the Chase Manhattan Bank investigator (William C. Lutes) went to the Atlantic City Hanover Shoe Store where they met respondent. When respondent was advised that Detective Emmer was there to investigate the alleged fraud, respondent indicated that he would cooperate. Mr. Lutes then requested to see the copies of all VISA credit card receipts on hand at the store. Respondent gave Mr. Lutes a box containing many receipts, which revealed approximately 75 fraudulent transactions involving stolen credit cards, totaling approximately $12,000. When it appeared that many of the fraudulent receipts bore respondent's initials as the salesman conducting the transactions, he was advised of his rights. According to the New Jersey State Police Investigation Report dated August 31, 1983 (P-1), respondent stated on that date that he did not have any knowledge that the credit cards being used for the fraudulent transactions were stolen, and that he called in every card for authorization before any merchandise was charged to the credit card.

Respondent ultimately obtained legal counsel, and on August 9, 1983, his attorney, who was also representing Mr. Ruiz, advised Detective Emmer that both of his clients wished to cooperate in the investigation. On September 22, 1983, respondent and Mr. Ruiz, accompanied by their attorney, turned themselves in to the New Jersey State Police. After being advised of his constitutional rights, Mr. Ruiz gave a formal statement which outlined the procedure utilized by him and respondent in connection with the fraudulent credit card transactions (P-2). Detective Emmer then advised respondent of his constitutional rights, at which time respondent gave a formal oral statement concerning his involvement with the fraudulent credit card transactions. Respondent's statement corroborated Mr. Ruiz's statement. Respondent and Mr. Ruiz were placed under arrest, processed and released. The fraudulent credit card transactions perpetrated by respondent and Mr. Ruiz consisted of 101 separate transactions involving 31 banks, 60 credit cards and 52 individual card holders. The total monetary value of the fraudulent transactions was $14,959.52. Respondent was charged with a violation of N.J.S.A. 2C:21-6e(2).[1]

Respondent entered the Atlantic County Pre-Trial Intervention Program on March 3, 1984. The special conditions of the program required respondent to report to his probation officer as directed, and to pay restitution in the amount of $3,000 to the Chase Manhattan Bank. A letter from respondent's probation officer states that on September 19, 1984 respondent's participation in the program was extended by Superior Court Judge Arthur Guerrera in order to permit respondent the opportunity to pay the then owing balance of the restitution in the amount of $1,500 (P-4). The $3,000 restitution was to be paid at the rate of $250 per month for 12 months. Respondent's probation officer also stated in his letter that respondent has remained law abiding and that he did not anticipate any problems with regard to respondent continuing to make the required restitution. At the hearing, respondent did not recall that Judge Guerrera had extended his participation in the Pre-Trial Intervention Program. Respondent was under the impression that the original term of the program was for a period of one year. The credit card fraud was respondent's only criminal violation. At the hearing, respondent testified that his involvement in the credit card fraud was a "big mistake."

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[1] It should be noted that the investigation report dated 8/31/83 (P-1) states that respondent committed credit card fraud in violation of N.J.S.A. 2C:21-6e(1), while the arrest report dated 9/26/83 alleges that respondent violated N.J.S.A. 2C:21-6e(2). Respondent through the stipulation of P-1 (8-31-83 investigation report) admits he violated N.J.S.A. 2C:21-6e(1).

Respondent is 22 years old and has been employed as a casino hotel employee registrant by Resorts International Hotel Casino (Resorts) for the past 13 months in the position of bar porter. He sets up the bar for the bartender, cuts fruits for the drinks, and provides glasses, ice and other necessary materials for the bar. Respondent does not handle money in his current position. Respondent commenced his employment at Resorts after being arrested for the credit card fraud. Since becoming employed at Resorts, he has received two pay raises, attributable to his satisfactory performance and based upon his length of employment. On July 20, 1984, respondent's then immediate supervisor issued an Official Notice of Outstanding Performance commending respondent for his performance as a bar porter (R-1).

DISCUSSION AND CONCLUSIONS OF LAW

N.J.S.A. 5:12-91b provides that subsequent to the registration of a casino hotel employee, the Commission may revoke, suspend, limit or otherwise restrict the employee's registration upon a finding that the registrant is disqualified pursuant to the criteria set forth in N.J.S.A. 5:12-86. N.J.S.A. 5:12-86g provides that a registrant who commits an act which would constitute any offense under N.J.S.A. 5:12-86c may disqualify a registrant even if the conduct has not been prosecuted under the criminal laws of the State of New Jersey. Pursuant to N.J.S.A. 5:12-86c(1), a conviction of N.J.S.A. 2C:21-6e(1) (credit card fraud) constitutes a statutory disqualifying offense if the crime is of the second or third degree. However, a violation of N.J.S.A. 2C:21-6e(1) constitutes a crime of the fourth degree.

The burden of proof in establishing a violation of section 86g of the Act is by the civil burden of preponderance of the evidence. I **CONCLUDE** that respondent has violated section 86g of the Act based upon respondent's admission that he committed credit card fraud in violation of N.J.S.A. 2C:21-6e(1).

N.J.S.A. 5:12-91d provides a registrant who has been convicted of a statutory disqualifying offense the opportunity to demonstrate his rehabilitation. Since respondent has not been convicted of a statutory disqualifying offense, the provisions of section 91d of the Act do not apply to this case.

Hence the next issue to be addressed is whether respondent's admitted participation in credit card fraud is inimical to the policy of the Act and to casino operations. The criteria for evaluating inimicality are similar to the factors to be considered with regard to rehabilitation, i.e., the circumstances of each case must be evaluated by taking into account the nature of the offense, the events surrounding it (including mitigating or aggravating factors), remoteness of the offense and the offender's conduct since the offense. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, February 1979, at 15.

In considering the question of inimicality, I **FIND** the following factors to be positive and to respondent's credit:

1. He admitted his wrongdoing and apparently cooperated with the State Police in its investigation and through admitting his criminal behavior.

2. He has apparently been successful in complying with the terms of the Pre-Trial Intervention Program, including restitution.

3. He has performed well in his job as a bar porter at Resorts International Hotel Casino.

4. There was no other evidence of criminal behavior since the credit card fraud.

On the other hand, the following negative factors must also be evaluated with regard to the issue of inimicality:

1. Respondent, while in a managerial position, permitted himself and one of his employees to engage in 101 separate transactions of credit card fraud involving 31 banks, 60 credit cards and 52 separate card holders. The amount of money involved in the fraud was reasonably substantial. The impact of the crime affected a substantial number of individuals and institutions. This was not a victimless crime.

2. Of particular concern is the length of time during which the crime was perpetrated, i.e., over a period of approximately 1 year. The crime involved development of a scheme to defraud and was not a crime committed impulsively, on the spur of the moment, as a result of a momentary lapse of good judgemnt.

3. Respondent who was employed in a managerial position, breached his trust to his employer.

4. Notwithstanding that there is no evidence of other criminal behavior on the part of respondent, I cannot view this particular crime as being an "isolated incident," due to the number of transactions involved and the length of time during which the crime was committed.

5. This crime is serious. There is no evidence of any social conditions which might mitigate against the seriousness of the offense.

I do not find respondent's age at the time of the offense to be particularly significant in this case, since it has been a relatively short period of time since he was arrested for the offense. This is not a case where respondent is a middle-aged person, who committed one criminal offense during his youth.

Respondent argued that it is significant that his job as a bar porter does not require him to handle money, and that therefore there is no ". . .damage to the Casino Control Act. . ." Participation in casino operations as a registrant is a revocable privilege, not a right. N.J.S.A. 5:12-1b(8). I **CONCLUDE** that of some significance in this case is the fact that respondent and a co-worker perpetrated a crime against respondent's employer. Pursuant to the declaration of policy set forth in section 1 of the Casino Control Act, the casino industry is a highly regulated one in which an essential element of the regulation rests in the public confidence and trust in the credibility and integrity of the regulatory process. While respondent was not actually convicted of credit card fraud, and it is a positive factor that he has admitted the commission of a crime, I **CONCLUDE** that two of the most significant factors with regard to the issue of inimicality are the serious nature of the crime which involved a substantial number of innocent parties, and

the length of time over which the crime was committed. Less than 18 months have passed since respondent gave his formal statement to the State Police admitting the commission of the crime.

Regrettably, I must **CONCLUDE** that the strict nature of the regulatory process, when combined with the serious nature of the crime committed by respondent over a period of 1 year, leads to the conclusion that respondent's offense is inimical to the Act and to casino operations, pursuant to N.J.S.A. 5:12-86c(4).

ORDER OF DISPOSITION

It is therefore **ORDERED** that respondent's casino hotel employee registration be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

the length of time over which the crime was committed. Less than 18 months have passed since respondent gave his formal statement to the State Police admitting the commission of the crime.

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ORDER OF DISPOSITION

It is therefore **ORDERED** that respondent's casino hotel employee registration be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 4, 1985
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

March 5, 1985
DATE

Bernadette P. Fringer
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 07 1985
DATE

Ronald J. Parkerson
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 New Jersey State Police Investigation Report, dated August 31, 1983 (8 pages) New Jersey State Police Supplementary Investigation Report, dated September 26, 1983; New Jersey State Police Arrest Report for Ruben Plaza, dated September 26, 1983; New Jersey State Police arrest report for Hector Ruiz, dated September 26, 1983

P-2 Statement of Hector Ruiz taken by Detective Emmer on September 22, 1983 (2 pages)

P-3 Credit card receipts involved in respondent's credit card fraud

P-4 Letter to Division of Gaming Enforcement from Michael McLean, Probation Officer, dated September 12, 1984

R-1 Official notice of outstanding performance re Ruben Plaza, dated January 20, 1984

LIST OF WITNESSES

FOR PETITIONER:

Detective Mark Emmer

FOR RESPONDENT:

Ruben Plaza

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-279
LICENSE NO. 27853-21
OAL DOCKET NOS. CCC 6753-84
and CCC 7715-83 (ON REMAND)

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

MIGUEL ANGEL POSADA

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 5, 1985;

IT IS on this 12th day of JULY 1985, ORDERED that the initial decision is modified as follows:

1. The ALJ's conclusion stated at p. 12 that the respondent's illegal entry into the United States in combination with his intentional attempt to conceal his illegal alien status by giving false and misleading information on the PHDF-4 form renders his continued licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)(4) is rejected. Disqualification pursuant to N.J.S.A. 5:12-86(c)(4) requires the identification of a specific criminal offense(s). Because the record does not identify the specific criminal offense(s) committed by the respondent, he is not disqualified pursuant to N.J.S.A. 5:12-86(c)(4).

2. The respondent's admission to taking coins from a slot machine tray during his employment as a slot attendant at the Golden Nugget Hotel Casino warrants a finding that he has not demonstrated that he possesses the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license of Miguel Angel Posada is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Miguel Angel Posada is pronibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Miguel Angel Posada, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6753-84

(REMAND CCC 7715-83)

AGENCY DKT. NO. 83-279

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW AND
PUBLIC SAFETY,

Petitioner,

v.

MIGUEL ANGEL POSADA,

Respondent.

Paul A. Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Daniel L. Cohen, Esq., for respondent (Krantz & Cohen, attorneys)

Louis Correa, Interpretor

Record Closed: February 5, 1985 Decided: March 22, 1985

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission (Commission) on August 25, 1983, seeking the revocation of the respondent's casino employee license, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Miguel Angel Posada requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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The initial hearing took place on April 6, 1984 and at that time Deputy Attorney General William E. Mountford, Jr. represented the Division, Mr. Posada appeared pro se, and Louis Correa, a friend of Mr. Posada, and Henry C. Willett, a witness for the Division, acted as the interpretors. Upon receipt of a document from Mr. Posada, the record in the matter closed on April 17, 1984. The undersigned administrative law judge issued an initial decision on May 31, 1984, and concluded that the casino employee license of the respondent be revoked.

Thereafter, Mr. Posada arranged to have Daniel L. Cohen, Esq. represent him. Mr. Cohen, by letter dated June 15, 1984, filed exceptions with the Commission and was present when the Commission considered the matter. By order dated September 5, 1984, the Commission remanded the matter to the Office of Administrative Law for further expansion of the record and specifically ordered that:

> Without limiting the scope of the hearing on remand, the Commission desires to have the following issues considered:
>
> 1. Whether the respondent's admitted theft of coins from a slot machine tray during his employment at the Golden Nugget is an inimical offense warranting disqualification pursuant to N.J.S.A. 5:12-86(c)(4) and (g).
>
> 2. Whether the above described theft precludes the respondent from demonstrating his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).
>
> 3. Whether the respondent provided false or misleading information on the PHDF-4 concerning either his alien status or his social security number which would warrant disqualification pursuant to N.J.S.A. 5:12-86(b).

A prehearing conference regarding the remanded matter was held by way of a telephone conference call on October 11, 1984. The hearing took place on January 4, 1985. Deputy Attorney General Paul A. Vigianos represented the Division at the hearing, and Louis Correa acted as the interpretor. After receipt of briefs, the record in the matter closed on February 5, 1985.

At the hearing on January 4, 1985, Mr. Cohen argued that the remanded matter should be limited to the issues set forth in the Commission's order and that Mr. Posada's illegal entry into this country was no longer an issue. Mr. Vagianos disagreed

and argued that the illegal status issue which was discussed in the initial decision was still an issue in the matter and that the Commission had requested supplemental findings of facts and conclusions of law.

Based on my reading of the order, I concluded that the Commission intended that the original record in the matter be reopened for supplemental testimony and supplemental findings of facts and conclusions of law. I indicated that in my second initial decision I would consider the issues set forth in the Commission's order and would then consider the issue of whether the respondent's illegal entry renders his continued licensure inimical to the policies of the Casino Control Act. I further indicated that the second initial decision would be a supplement to the initial decision, a copy of which is attached hereto.

At the hearing, Mr. Vagianos indicated that the Division would rely on the record as established during the first hearing, including exhibits P-1 through P-4, and one additional exhibit, the reports of the Golden Nugget Casino and Hotel (Golden Nugget) regarding the alleged theft of coins by Mr. Posada while employed there as a housekeeper (P-5). This exhibit includes the signed statement of Debra Pew, a customer, stating that "[W]hile standing in front of slot machine, housekeeper excused himself and pushed himself in front of me and started sweeping floor. He then reached in the slot machine tray and took a handful of quarters and put them in his pocket and started to walk away. I had to reach in his pocket to get it back" (P-5). The Golden Nugget reports reflected the fact that Mr. Posada claimed that no one was playing the slot machine when he took the coins and the fact that Mr. Posada had not attended the orientation program for new employees because of his poor comprehension of the English language (P-5). As a result of this incident, Golden Nugget fired the respondent, and the reason for the termination is listed as "violation of employer's rules or procedure" on a form dated March 20, 1981, and as "dishonesty" on a form dated March 25, 1981 (P-5).

Mr. Cohen moved to dismiss the three issues as set forth in the Commission's order and argued that the Golden Nugget incident was insufficient reason to warrant the revocation of the respondent's casino employee license. Mr. Cohen noted that only a handful of coins was involved, that Mr. Posada did not attend the casino's orientation program, and that neither the casino nor Ms. Pew brought any criminal action against Mr. Posada. As to the statements in the respondent's PHDF-4 form (P-4), Mr. Cohen

argued that Mr. Posada did not intentionally misrepresent his status in this country and that the information relating to his citizenship status is not a material fact as to his continued licensure.

Mr. Vagianos opposed the motion and argued that it was illegal to work in this country without a social security number and the fact that Mr. Posada gave a false social security number was material. Mr. Vagianos argued that any theft by a casino employee committed on the premises of a casino, even if the crime itself was not a statutory disqualifier, could render continued licensure inimical to the policies of the Casino Control Act. After the arguments, I denied the motion to dismiss and I directed the parties to submit briefs after the hearing regarding the federal law governing social security numbers.

On his own behalf, Mr. Posada testified that while he was employed by Golden Nugget, he had seen other housekeepers find and take coins left by patrons in the slot machine trays or on the floor and he assumed that this was the common and accepted practice. At the time of the incident in issue, the respondent had a poor comprehension of English and had been employed for a short period of time. Mr. Posada admitted that he took some quarters from the slot machine, but denied that anyone was near the machine at that time. After he put the coins in his pocket, customers from a nearby slot machine came over and said the money belonged to them. Mr. Posada gave them the coins. According to Mr. Posada, it is not uncommon for a customer to claim coins found by a housekeeper even though that person had not left the coins.

Except for this incident, Mr. Posada has a good employment record with the casino industry and he has no prior criminal record in Colombia or the United States (R-11).

Approximately two weeks after the respondent was fired by Golden Nugget, he started to work for Playboy Hotel and Casino (Playboy) as a kitchen utility employee, and was later promoted to a housekeeper on the casino floor. For the six-month period prior to the second hearing in this matter, Mr. Posada has been employed as a blackjack dealer by Atlantis Casino Hotel (formerly Playboy). Mr. Posada attended a casino school for blackjack and his casino employee license has been upgraded.

As to his casino employee license application, Mr. Posada stated that somebody employed by the Commission helped him fill out the PHDF-4 form. According to Mr. Posada, this person translated the questions and then wrote down the respondent's answers in English. Mr. Posada stated that he wrote the social security number that appears on the PHDF-4 form alongside of his picture and that he wrote his initials on the same page (P-4).

The PHDF-4 form submitted by Mr. Posada, states that he was born in Colombia, that he entered the United States at Miami, Florida, and that Oscar Montoyo was his sponsor (P-4). There is no response to question number 13 which states: "Are you presently in this country on a visa, work papers or passport?" and the response to question number 14, which states: "If you are in this country as an alien, list your alien number" is the word "transaction" (P-4).

Louis Correa testified that he is a personal friend of Mr. Posada, that he has known him since 1981 and that he considers Mr. Posada to be an honest and hardworking person who does not steal, lie or cheat. According to Mr. Correa, Mr. Posada sends money to Colombia for the support of his child.

Mr. Correa stated that he has worked for the casino industry for six years and that he is currently employed as a slot booth cashier by the Claridge Hotel and Casino. According to Mr. Correa, it is not unusual for customers to leave coins in the slot machine's tray as well as other personal items on or near the slot machines. Mr. Correa stated that it is the common practice of the housekeeping personnel to take the coins that have been abandoned by customers.

In addition to the exhibits introduced into evidence on behalf of the respondent (R-1 through R-5) at the first hearing, Mr. Cohen had introduced into evidence several letters of recommendation (R-6 through R-10).

By letter dated December 30, 1984, Ray Ramos, a pit boss employed by Atlantis Casino Hotel (Atlantis), stated that he has known Mr. Posada for approximately three years and that Mr. Posada is a person of good character and reputation and is conscientious, reliable and industrious (R-6). By letter, Mr. Rafael A. Monagas stated that he has known Mr. Posada for approximately five years, that he was the respondent's supervisor at Playboy and Tropicana Hotel and Casino, and that he considers Mr. Posada

to be a reliable and trustworthy employee (R-7). By letter dated November 18, 1984, Gregory E. Ross, Senior Security Supervisor, Atlantis, stated that he has known Mr. Posada for approximately two years and that Mr. Posada is a hard worker, reliable and honest (R-8). By letter dated November 24, 1984, Ed Raffie, Assistant Shift Supervisor, Security Department, Atlantis, stated that has known Mr. Posada for four years and that Mr. Posada is an honest and hardworking person (R-9). By letter dated November 31, 1984, Jose Diaz, Executive Housekeeper, Atlantis, stated that he has known Mr. Posada for three years and that he found Mr. Posada to be an honest and trustworthy person and a dedicated, reliable, efficient and courteous employee (R-10).

At the hearing and in his letter memorandum, Mr. Cohen argued that the Division had not established reasonable grounds for the revocation of the respondent's license as a casino employee. Mr. Cohen noted that the complaint filed against the respondent did not even mention the Golden Nugget incident and argued that the Division obviously did not consider it to be a serious matter. In addition, Mr. Cohen noted that Mr. Posada's license has not been temporarily suspended and that the Division had not objected to the upgrading of the respondent's license so that he could become a blackjack dealer.

As to questions 13 and 14 on the PHDF-4 form, Mr. Cohen argued that Mr. Posada's responses are not incorrect or misleading and reflected the respondent's position that his citizen status was uncertain and that he was "in the process" of getting permanent status. Further, Mr. Cohen argued that the social security number given by Mr. Posada is not a material fact and that he could have refused to give this number to the Commission pursuant to the federal privacy law.

As to the Golden Nugget incident, Mr. Cohen argued that Mr. Posada thought that the coins had been abandoned and that he did not intend to steal anything. Mr. Cohen argued that Ms. Pew's statement was not credible and that there was no evidence to support her statement. Mr. Cohen noted that Golden Nugget recognized the incident to be a breach of its internal regulations and that this was unfair to Mr. Posada since he had not participated in their orientation program. Mr. Cohen stated that Golden Nugget was aware of Mr. Posada's limited comprehension of English and that it should not have assigned him to work on the casino floor without proper training. Mr. Cohen argued that it was not unreasonable for Mr. Posada to follow the example of the other members of the housekeeping staff and to take abandoned coins.

At the hearing and in his brief, Mr. Vagianos stated that prior to the hearing he was unaware that Mr. Posada had become a blackjack dealer. After the hearing, Mr. Vagianos determined that Mr. Posada had obtained the Commission's approval to be a blackjack dealer and he stated that this approval is automatically given upon a showing of the completion of the educational requirements and is not subject to a separate investigation by the Division. However, Mr. Vagianos argued that the fact that Mr. Posada is now a dealer places him in a more responsible position than the one he had at the time of the initial hearing and that his license is now governed by a higher standard of review.

Mr. Vagianos disputed Mr. Posada's testimony that he had taken abandoned coins and recognized that if the coins were in fact abandoned, Mr. Cohen's argument that Mr. Posada had done nothing wrong since he was not familiar with the casino's internal regulations was persuasive. Mr. Vagianos noted that the statement by Ms. Pew clearly shows that the coins were not abandoned and that Mr. Posada's action was a theft and not a mere violation of the casino's internal regulations.

As to the social security number listed on the PHDF-4 form, Mr. Vagianos stated that Mr. Posada knew that the social security number was fraudulent, that he had intentionally misrepresented a material fact and that he he is disqualified pursuant to N.J.S.A. 5:12-86(b). Mr. Vagianos argued that a person cannot work in the United States without a valid social security number and that this makes the social security number a material fact. In support of his position, Mr. Vagianos cited several provisions of the law governing federal income tax returns which require a person to list his/her social security number and which require aliens to file tax returns, 26 U.S.C. §6109(a)(d), 26 U.S.C. §6012(a)(1) (A) and (c)(i) and 26 U.S.C. §6011(a). Mr. Vagianos disputed Mr. Cohen's argument that the respondent did not have to provide his social security number pursuant to the federal privacy law.

Mr. Vagianos also argued that the false social security number and Mr. Posada's responses to questions 13 and 14 on the PHDF-4 form render his continued licensure inimicable to the policies of the Casino Control Act and also adversely reflect on his reputation for good character, honesty and integrity.

In his written response, Mr. Cohen stated that Mr. Vagianos had not shown that a person was not entitled to employment without a social security number and further represented that Mr. Posada had paid federal income tax while employed by the casino industry.

I **FIND** that the supplemental facts as presented at the second hearing are not in dispute except for those relating to the Golden Nugget incident on March 20, 1981. As to this incident, the Division relies on a written statement signed by Debra Pew. Ms. Pew did not testify at the hearing and her statement was not under oath.

Although hearsay evidence is admissible pursuant to the regulations governing administrative proceedings, N.J.A.C. 1:1-15.2(a), and casino law, N.J.S.A. 5:12-107a(6), there is a question as to what weight should be given to such evidence. Although I recognize that Ms. Pew had less reason to lie than Mr. Posada about the incident, I cannot foreclose the possibility that Ms. Pew had lied in order to support her claim to the money taken by Mr. Posada. On the other hand, at both hearings Mr. Posada appeared to be a truthful witness and I believe his testimony as to what occurred in the Golden Nugget on March 20, 1981. I do not believe that Mr. Posada would have endangered his employment with the casino by stealing a few quarters from a patron in full view of that person. I also accept Mr. Cohen's argument that Mr. Posada did nothing wrong on that day since he was not told of the casino's policy regarding abandoned coins.

Based on the facts, I **CONCLUDE** that Mr. Posada took some abandoned coins from a slot machine in the Golden Nugget on March 20, 1981, and his action was not a statutory disqualifier pursuant to either N.J.S.A. 5:12-86(c)(4) or 5:12-86(g). In addition, I **CONCLUDE** that the respondent's action on that date does not preclude the respondent from demonstrating his good character, honesty and integrity as required by N.J.S.A. 5:12-90b and 5:12-89b2.

The next issue to be considered is whether the information given by the respondent on his PHDF-4 form, specifically the responses to questions 13 and 14 and the social security number listed on the form, warrants his disqualification pursuant to N.J.S.A. 5:12-86(b), which provides:

> Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to

> qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

In addition to this provision, it should be noted that the Division, on behalf of the Commission, conducts all investigations of applications for casino licensure pursuant to N.J.S.A. 5:12-87, and that an applicant has the affirmative responsibility to provide any information required by the Commission or Division and that the refusal to provide such information is grounds for the denial or revocation of licensure, pursuant to N.J.S.A. 5:12-80.

Although the PHDF-4 form as printed does not require an applicant to give his/her social security number, the form was stamped by or on behalf of the Division and the stamped information identifies the Division's Fingerprint Bureau and requests the applicant's social security number (P-4). Therefore, I **FIND** that it is the Division's request that an applicant submit his/her social security number for the obvious purpose of assisting the Division in its investigation.

Prior to considering the legal requirements, it is necessary to clearly establish Mr. Posada's legal status in this country. Mr. Posada admitted at the first hearing that he illegally entered this country in December 1980 and that he paid $100 for a social security card. Thereafter, on May 17, 1982, he married a United States resident and now has temporary alien status which allows him to remain and work in the United States pending an investigation regarding his divorce and remarriage. Although the record does not reflect when Mr. Posada submitted the PHDF-4 form to the Commission, the record does establish that he received his casino employee license on May 13, 1981 and it is reasonable to assume that he submitted the PHDF-4 form sometime before that date. Therefore, it is clear that at the time Mr. Posada completed and submitted the PHDF-4 form he was an illegal alien, and that he was in this country in violation of the United States Immigration and Nationality Act, 8 U.S.C. §1251, 1325 and that he had no legal right to work in this country, 8 C.F.R. §109.1, 20 C.F.R. §422.105, Pilapel v. I.N.S., 424 F. 2d 6 (10th Cir. 1970), Ojeda-Vinales v. I.N.S., 523 F.2d 286 (2nd Cir. 1975).

It is also evident from Mr. Posada's testimony at the first hearing that he purchased the social security card in order to be able to obtain employment in the country. Therefore, I **FIND** that the answers given by Mr. Posada in the citizenship data

section of the PHDF-4 form as well as the false social security number listed by Mr. Posada on this form was intended to convey the impression that he had legal alien status and was entitled to work in this country.

There have been several recent casino cases involving illegal aliens. In the Division of Gaming Enforcement v. Ospina-Lopez, OAL DKT. CCC 3131-84 (Sept. 14, 1984), the administrative law judge concluded that Mr. Ospina-Lopez had forfeited his registration pursuant to N.J.S.A. 5:12-86b since he had given a false social security number on his casino application form. In rejecting the initial decision, by order dated January 14, 1985, the Commission noted that it does not require an applicant to submit his social security number and that the administrative law judge did not make a finding that the false social security number was a misrepresentation of a material fact which related to the person's qualifications. The Commission also rejected the argument that a false social security number rendered the person's continued registration inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4). As to this decision, the Division has recently withdrawn its appeal to the Appellate Division of the Superior Court.

In the Division of Gaming Enforcement v. Bonilla, OAL DKT. CCC 8593-83 (Sept. 17, 1984), the administrative law judge determined that Mr. Bonilla's fradulent information on his application regarding his place of birth was a material fact and that he was disqualified pursuant to N.J.S.A. 5:12-86b. In the initial decision, the administrative law judge specifically found that the fraudulent information was not an inimical factor pursuant to N.J.S.A. 5:12-86(c)(4). On December 3, 1984, the Commission adopted this initial decision without comment.

In the Division of Gaming Enforcement v. Hincapie, OAL DKT. CCC 2545-84 (Oct. 9, 1984), there was no allegation of any misrepresentation on the application for registration, and I determined that the fact that the applicant was an illegal alien at the time he submitted his casino application was not an inimical disqualification, pursuant to N.J.S.A. 5:12-86(c)(4) and that Mr. Hincapie could work for the casino industry as long as he was considered to be a legal alien by the federal government. This initial decision was adopted by the Commission, without comment, on December 27, 1984.

These cases, and specifically the final decision in the Ospina-Lopez case, can be distinguished from this matter since they involved the registration of casino hotel employees and the applicants did not have the legal responsibility to show that they were persons of good character, honesty and integrity.

Therefore, based on my finding that Mr. Posada gave misleading and false information on his PHDF-4 form in order to create the impression that he was a legal alien and could legally work for the casino industry, I **CONCLUDE** that the Division has shown an intentional misrepresentation of a material fact which directly relates to his qualifications for a position with the casino industry, and that Mr. Posada is disqualified from licensure pursuant to the provisions of N.J.S.A. 5:12-86b. Further, I **CONCLUDE** that because of this intentional misrepresentation, Mr. Posada cannot establish by clear and convincing evidence that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90b and 5:12-89b2.

The fact that after filling the PHDF-4 form Mr. Posada became a legal alien does not mitigate the fact that he intentionally gave false and misleading information in his application.

Although the letters submitted by Mr. Posada make a persuasive argument that he is generally an honest person and has a good employment record with the casino industry, these letters do not mitigate the fact that he made intentional misrepresentations in order to get a casino employee license. Further, I should note that the provisions relating to rehabilitation in N.J.S.A. 5:12-90 are not applicable to the disqualification criteria contained in N.J.S.A. 5:12-86b.

I also specifically reject Mr. Cohen's argument that the social security number given by Mr. Posada is not a material fact since he did not have to reveal the number pursuant to the federal Right to Privacy Act. This act was intended to protect legitimate social security card holders from governmental and commercial abuse as to requests for social security numbers, 5 U.S.C. §552(a), and Mr. Cohen has not shown that the request of the Division for this information is in fact an abuse of Mr. Posada's rights or a violation of that act.

774 As indicated at the start of the second hearing, I have considered separately the three issues set forth in the Commissioner's order and will now consider the last issue, namely, whether Mr. Posada's illegal entry into this country renders his continued licensure inimical to the policies of the Casino Control Act.

In my first initial decision, I concluded that Mr. Posada's license should be revoked based on all the facts presented at the hearing, which included his illegal entry. If I consider only the fact that Mr. Posada had illegally entered this country and the fact that he now has legal alien status in this country, I would conclude that Mr. Posada's continued licensure would not be inimical to the policies of the Casino Control Act. Such a conclusion would be consistent with the decision in the Hincapie case.

However, when I consider the respondent's illegal entry into this country in combination with his intentional attempt to conceal his illegal alien status by giving false and misleading information on the PHDF-4 form, I **CONCLUDE** that the respondent's continued licensure would be inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

Based on my conclusions in this matter, I **ORDER** that the casino employee license of Miguel Angel Posada be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 22, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

March 22, 1985
DATE

Bernadette T. Finn
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 27 1985
DATE

Ronald L. Parker/phc
OFFICE OF ADMINISTRATIVE LAW

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APPENDIX

SUPPLEMENTAL EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 through P-4	Admitted into evidence during the previous hearing
P-5	Records of Golden Nugget Casino and Hotel regarding the employment of Miguel Angel Posada and an incident on March 20, 1981

FOR THE RESPONDENT:

R-1 through R-5	Admitted into evidence during the previous hearing
R-6	Letter from Ray Ramos, dated December 30, 1984
R-7	Letter from Rafael A. Monagas, dated January 2, 1985
R-8	Letter from Gregory E. Ross, dated November 18, 1984
R-9	Letter from Ed Raffie, dated November 24, 1984
R-10	Letter from Jose Diaz, dated October 31, 1984
R-11	Record Search Data Response as to Miguel Angel Posada

SUPPLEMENTAL WITNESSES FOR RESPONDENT:

Louis Correa
Miguel Angel Posada

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-279
OAL DOCKET NO. CCC 7715-83
LICENSE NO. 27853-22

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

MIGUEL ANGEL POSADA

Respondent.

ORDER OF REMAND

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law (OAL) on June 1, 1984, recommending revocation of the casino employee license of respondent Miguel Angel Posada; and the respondent having filed exceptions to the initial decision on June 20, 1984, to which the Complainant filed no reply; and the Commission after having considered the entire record of the proceedings resolved at its public meeting of August 1, 1984, to remand this matter to the OAL,

IT IS on this 5th day of SEPTEMBER 1984, ORDERED that this matter be and hereby is remanded to the OAL for further expansion of the record. Without limiting the scope of the hearing on remand, the Commission desires to have the following issues considered:

1. Whether the respondent's admitted theft of coins from a slot machine tray during his employment at the Golden Nugget is an inimical offense warranting disqualification pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

2. Whether the above described theft precludes the respondent from demonstrating his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

3. Whether the respondent provided false or misleading information on the PHDF-4 concerning either his alien status or his social security number which would warrant disqualification pursuant to N.J.S.A. 5:12-86(b).

IT IS FURTHER ORDERED that copies of this Order of Remand be served upon Miguel Angel Posada and the Division of Gaming Enforcement within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7715-83

AGENCY DKT. NO. 83-279

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW &
PUBLIC SAFETY,

Petitioner,

v.

MIGUEL ANGEL POSADA,

Respondent.

APPEARANCES:

William E. Mountford, Jr., Deputy Attorney General, on behalf of the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Miguel Angel Posada, respondent, pro se

Louis Correa, Interpreter

Henry C. Willett, Interpreter

Record Closed: April 17, 1984 Decided: May 31, 1984

BEFORE **BEATRICE S. TYLUTKI**, ALJ:

This matter concerns the complaint of the Division of Gaming Enforcement (hereinafter referred to as "Division") filed with the Casino Control Commission on August 25, 1983, seeking the revocation of the respondent's casino employee license, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Posada requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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A prehearing conference was held on January 13, 1984, and at that time, Marguerita Diaz, an employee of the Office of Administrative Law, acted as the interpreter. At the prehearing conference, the parties agreed that the issues in this matter are:

(1) Whether the respondent gave a fraudulent social security number in his application for a casino employee license.

(2) Whether the respondent is presently illegally in the United States and whether he made any intentional misrepresentation regarding the circumstances of his entry into the United States on his application for a casino employee license.

(3) Whether the petitioner's action makes his continued licensure inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c.

(4) Whether the respondent can meet the requirements for good character, honesty and integrity as required by N.J.S.A 5:12-89(b)2.

The hearing took place on April 6, 1984 and upon receipt of a document (R-5) from Mr. Posada, the record in the matter closed on April 17, 1984.

Based on the testimony and exhibits presented at the hearing, I **FIND** that the undisputed facts are:

(1) Mr. Posada is a citizen of Colombia, South America and he illegally entered the United States on or about December 1980 near Miami, Florida.

(2) Mr. Posada came to the United States because he was unable to get specialized medical treatment for an eye injury in Colombia.

(3) Mr. Posada was arrested by the United States Immigration and Naturalization Services on April 27, 1982, and was charged with illegal entry into the United States (P-1, P-2, P-3, R-4).

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(4) After a hearing, an Immigrant Judge ordered the voluntary departure of the respondent on or before June 7, 1982 (P-3).

(5) In April 1982, Mr. Posada received a divorce in New York State from his wife, Mery Posada (R-5), a citizen of Colombia, and on May 17, 1982, he married Sonia Florez, an United States resident (R-2), who has filed a petition requesting that Mr. Posada be allowed to stay in the United States (R-1).

(6) Mr. Posada has been allowed to stay in the United States pending an investigation regarding his divorce and remarriage (R-1).

(7) Mr. Posada was told at the time of his arrest on April 27, 1982, that he could not legally work in the United States and that neither his remarriage to a United States resident or the fact that he has been permitted to remain in the United States allows him to work in this country.

(8) Someone gave Mr. Posada a Social Security Card containing the number 063-11-2987, and Mr. Posada paid this person approximately $100 (R-3).

(9) On his application for a casino employee license, Mr. Posada gave his Social Security Number as 063-11-2987, set forth the name of a sponsor for his entry into the United States and did not respond to the question asking for a copy of his visa, work papers or passport (P-4). In response to the question asking for his alien number, Mr. Posada inserted the word "transaction" (P-4), and at the hearing he stated that this meant that the matter was in "process."

(10) Mr. Posada received a casino employee license on May 13, 1981.

(11) Mr. Posada had to work in order to earn money for his eye operation and with the assistance of his casino union, Mr. Posada had an eye operation at the Wills Eye Clinic in Philadelphia, Pennsylvania.

(12) Mr. Posada was employed by the Golden Nugget as a casino area attendant. He was fired for dishonesty. Mr. Posada took coins left in a slot machine and the person who left the coins there complained to the security guard. According to Mr. Posada, it is the practice of cleaning employees to the take coins left in slot machines or found on the floor.

(13) For awhile, Mr. Posada was employed by both Playboy Hotel and Casino as a casino cleaner and Tropicana Hotel and Casino as a public area attendant.

(14) When he was arrested on April 27, 1982, Mr. Posada was working as a kitchen attendant at Resorts Hotel and Casino and he left his position shortly thereafter.

(15) Mr. Posada is currently employed as a public area attendant at Playboy Hotel and Casino.

In his own defense, Mr. Posada admitted that he entered the United States illegally; however, he was not aware that the Social Security card was improperly obtained for him even though he paid approximately $100 for the card. Mr. Posada had a newspaper article from the Atlantic City Press (P-4) admitted into evidence. This article indicated that the Casino Control Commission had refused to suspend the registrations of certain alleged illegal aliens. Such a suspension would have been before an administrative hearing on a complaint filed by the Division.

Mr. Posada speaks only a few words in English and has a limited ability to read the English language. It was unclear at the hearing as to whether Mr. Posada filled out his own application for a casino employee license or whether he was assisted by either a friend or a Casino Control Commission employee.

Mr. Mountford argued that Mr. Posada was in this country illegally and that he was violating the federal law by working in this country without the necessary authorization. Further, Mr. Mountford stated that Mr. Posada gave a false Social Security number and did not fully disclose the circumstances regarding his entry into the United States in his application for a casino employee license.

Mr. Posada stated that he has been given permission to stay in the United States and that he wants to remain in this country.

Based on the above, I **FIND** that Mr. Posada was aware that he was not entitled to work in the United States and that he paid a person to obtain a Social Security card for him since he knew that he could not legally obtain one for himself. Also, I **FIND** that Mr. Posada intentionally gave false and misleading information on his license application in order to avoid admitting that he had illegally entered the United States.

Based on the facts, I **CONCLUDE** that the Division has shown that the respondent's continued licensure would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c, and that the respondent has not shown that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)2. Therefore, I **ORDER** that the casino employee license of Miguel Angel Posada be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 31, 1984
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

01 JUN 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 06 1984
DATE

Ronald L. Parker /jab
OFFICE OF ADMINISTRATIVE LAW

ij

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EXHIBITS ADMITTED INTO EVIDENCE

FOR THE PETITIONER:

P-1 Record of Deportable Alien, sets forth the circumstances regarding the arrest of Mr. Posada for illegal entry into the United States

P-2 Order to Show Cause regarding the charge that Mr. Posada illegally entered the United States

P-3 Decision of the Immigration Judge in the matter involving Mr. Posada

P-4 Part of the application filed by Mr. Posada for a casino employee license

FOR THE RESPONDENT:

R-1 Notice of Defense signed by Mr. Posada, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa signed by Maria Sonia Posada, and Notice Extending the Deportation Date for Mr. Posada

R-2 Certificate of Marriage of Miguel Posada and Sonia Florez

R-3 Social Security card with the name of Miguel Posada and the Social Security number of 063-11-2987

R-4 Newspaper article appearing in the Atlantic City Press on September 22, 1983.

R-5 Divorce Judgment in the matter of Miguel Posada v. Mery Posada (received by mail on April 17, 1984)

WITNESSES

FOR THE PETITIONER:

Henry C. Willett

FOR THE RESPONDENT:

Miguel Angel Posada

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 84-EA-168; 84-CSI-16
APP. NOS. 44044-21; 1135-70
OAL DOCKET NO. CCC 8070-84

APPLICATIONS OF RONALD P. RAHHAL FOR A CASINO EMPLOYEE LICENSE (JUNKET REPRESENTATIVE) AND STUDIO 7 TOURS FOR A JUNKET ENTERPRISE LICENSE

FINAL ORDER

Proceedings in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 4, 1985.

IT IS on this 23rd day of SEPTEMBER 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the applications of Ronald P. Rahhal for a casino employee license (junket representative) and Studio 7 Tours for a junket enterprise license are granted upon the following conditions:

(1) Ronald P. Rahhal and Studio 7 Tours have no business activities with Mitchell Rahhal or with any business entity in which Mitchell Rahhal may have or hereinafter acquire an interest.

(2) No employee of Studio 7 Tours shall have any business activities with Mitchell Rahhal or with any business entity in which Mitchel Rahhal may have or hereinafter acquire an interest.

IT IS FURTHER ORDERED that copies of this final order be served upon the applicants, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 8070-84
AGENCY DKT. NOS. 84-EA-168 and
84-CSI-16

RONALD P. RAHHAL and
STUDIO 7 TOURS,
Petitioners,
v.
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

For petitioner: **Alfred R. Scerni, Jr., Esq.** (Wilson & Scerni, attorneys)
For respondent: **R. Lane Stebbins,** Deputy Attorney General, (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 28, 1985 Decided: July 19, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of petitioner Studio 7 Tours for licensure as a casino service industry (junket enterprise) and the application of petitioner Ronald P. Rahhal for licensure as a casino employee, permitting him to act as a junket representative. By letter report to the Casino Control Commission, dated July 24, 1984, the Division of Gaming Enforcement had objected to the licensure of the petitioners.

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PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated October 26, 1984, the petitioners requested a hearing. On November 1, 1984, the Commission transmitted the matters on a consolidated basis to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was held in this matter on December 20, 1984. Subsequent to the prehearing conference, but prior to the hearing, the parties engaged in discussion concerning the possibility of a settlement disposition of this matter. Thereafter, the parties determined that a mutually satisfactory resolution of the matters in controversy was possible, and they reached agreement on and consented to a settlement disposition.

FINDINGS OF FACT

I have reviewed the entire record and the terms of settlement and I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as if set forth at length. Also attached to this Initial Decision are the material Stipulations of Fact of the parties.

2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.

3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.A.C. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides

that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 19, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 22, 1985
DATE

Bernadette T. Fricker
CASINO CONTROL COMMISSION

Mailed to Parties:

July 23, 1985
DATE

Elizabeth Thompson
OFFICE OF ADMINISTRATIVE LAW

bc

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EXHIBITS

None

WITNESSES

None

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IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: R. LANE STEBBINS
Deputy Attorney General
(609) 633-7156

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 1135-70 and 4404-21
OAL DOCKET NO. CCC8070-84

IN THE MATTER OF)

STUDIO 7 TOURS and) SETTLEMENT AGREEMENT

RONALD P. RAHHAL)

With the captioned matter having been discussed by and between the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Respondent, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by R. Lane Stebbins, Deputy Attorney General and Alfred R. Scerni, Esq. and Wilson & Scerni, Attorneys for Petitioners Ronald P. Rahhal and Studio 7 Tours, and said matter having been resolved, it is hereby consented to and agreed by and between the parties that:

WHEREAS, Ronald P. Rahhal has applied for licensure as a junket representative and Studio 7 Tours, an enterprise owned and

operated by Ronald P. Rahhal, has applied for licensure as a junket enterprise; and

WHEREAS, the Division of Gaming Enforcement conducted an investigation of the applicants and by letter dated July 24, 1984 objected to the licensure of Ronald P. Rahhal and Studio 7 Tours; and

WHEREAS, the parties hereto have stipulated as to certain facts in the captioned matter as evidenced by a like captioned document title Stipulations, of even date herewith and executed by or on behalf of all parties, and that said facts and representations are true; and

WHEREAS, Ronald P. Rahhal has made representations as to prior conduct and intended action addressing the matters identified by the Division of Gaming Enforcement in the letter of July 24, 1984; and

WHEREAS, the Division of Gaming Enforcement has reviewed and relied upon the representations by Ronald P. Rahhal individually, and as the representative of Studio 7 Tours.

IT IS THEREFORE, consented to an agreed upon by and between the parties in settlement of the captioned matter that:

A. The Division of Gaming Enforcement would not object to the licensure of Ronald P. Rahhal as a junket representative and Studio 7 Tours as a junket enterprise; provided however, that Ronald P. Rahhal, with knowledge of the reliance of the Division of Gaming Enforcement upon his representations, fully satisfy any or all outstanding obligations owed by Studio 7 Tours to Mitchell Rahhal; and provided further, that Ronald P. Rahhal continued to

refrain from transacting business, directly or indirectly, with Mitchell Rahhal.

B. Ronald P. Rahhal has paid to Mitchell Rahhal the sums of $25,000.00 on May 2, 1985, and $25,693.19 on June 4, 1985, in full satisfaction of debts owed to Mitchell Rahhal from Ronald Rahhal for the purchase of Studio 7 Tours.

C. This settlement agreement is subject to inclusion by an Administrative Law Judge in an Initial Decision and final approval and adoption by the Casino Control Commission.

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
THOMAS R. O'BRIEN

BY: R Lane Stebbins
R. LANE STEBBINS, DAG

WILSON and SCERNI, P.A.

BY: Alfred R. Scerni
ALFRED R. SCERNI, JR.
ATTORNEY FOR PETITIONERS

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IRWIN I. KIMMELMAN
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By: R. LANE STEBBINS
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS.: 1135-70 and 4404-21
OAL DOCKET NO. CCC8070-84

IN THE MATTER OF	)	
	)	
STUDIO 7 TOURS and	)	STIPULATIONS
	)	
RONALD P. RAHHAL	)	

Respondent, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement and Petitioner, Ronald P. Rahhal, individually and as the principal of Studio 7 Tours, hereby stipulate as follows:

1. State of New Jersey, Department of Law & Public Safety, Division of Gaming Enforcement (hereafter "Division") is responsible, pursuant to P.L. 1977, subsection 76 for the enforcement of the provision of the Casino Control Act and the investigation of the qualifications of each applicant for licensure.

2. Petitioners Studio 7 Tours and Ronald P. Rahhal have applied for licensure as a junket enterprise and a junket representative, respectively, pursuant to N.J.S.A. 5:12-102.

3. By letter dated July 24, 1984 the Division submitted the results of its investigation to the Casino Control Commission objecting to the licensure of the applicants for the reasons set forth therein.

4. The applicants requested a hearing and the matter was referred to the Office of Administrative Law.

5. The Division's letter report identified and Ronald P. Rahhal acknowledged a rental arrangement between Ronald P. Rahhal and Mitchell Rahhal for office space within the premise utilized by Studio 7 Tours.

6. On April 10, 1985, Ronald P. Rahhal, under oath, described the rental arrangement as an oral lease which he had terminated subsequent to the date of the letter report.

7. Ronald P. Rahhal stated, under oath, that no similiar relationship between himself individually or as a principal of Studio 7 Tours and Mitchell Rahhal would be established in the future.

8. The Division in its letter report identified and Ronald P. Rahhal acknowledged a partnership business arrangement in which Ronald P. Rahhal and Mitchell Rahhal were principals. The business was known as Studio 8 Tours.

9. On April 10, 1985 Ronald P. Rahhal described, under oath, the nature of Studio 8 Tours and produced, identified and

authenticated certain documents evidencing a sale of the enterprise to a third party.

10. The sale of Studio 8 Tours terminated that business relationship previously existing between Ronald P. Rahhal and Mitchell Rahhal.

11. The Division's letter report of July 24, 1984 identified and Ronald P. Rahhal acknowledged the existence of a certain financial obligation existing between Ronald P. Rahhal and Mitchell Rahhal.

12. The financial obligation arose in connection with the purchase of Studio 7 Tours by Ronald P. Rahhal from Mitchell Rahhal.

13. On April 10, 1985, Ronald R. Rahhal discussed, under oath, the obligation to Mitchell Rahhal and produced, identified and authenticated certain financial documents.

14. During the discussion referenced in paragraph 13, herein, Ronald P. Rahhal identified the amount of the obligation owed to Mitchell Rahhal and described certain actions regarding the reduction of the obligation owed to Mitchell Rahhal. Ronald P. Rahhal produced, identified and authenticated copies of certain documents evidencing his prior actions toward reducing the obligation owed to Mitchell Rahhal.

15. During the discussion referred to in paragraph 13, herein, Ronald P. Rahhal produced, identified and authenticated documents, specifically statements of accounts and loan applications, related to his financial condition. Ronald P. Rahhal represented, under oath, that he would take and was taking certain

action to draw upon his financial accounts and resources, and to apply the proceeds in satisfaction of the obligation owed to Mitchell Rahhal.

16. Ronald P. Rahhal, under oath, stated his intention to completely satisfy his financial obligation to Mitchell Rahhal incurred in connection with the purchase of Studio 7 Tours, within sixty days of April 10, 1985.

17. Ronald P. Rahhal stated, under oath, that Mitchell Rahhal is not presently involved with Studio 7 Tours in any manner whatsoever, excepting the financial obligation discussed herein which is intended to by fully satisfied by the applicant.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
THOMAS R. O'BRIEN, DIRECTOR

By: R Lane Stebbins
R. LANE STEBBINS,
DEPUTY ATTORNEY GENERAL

WILSON and SCERNI, ESQS.

By: Alfred R. Scerni
ALFRED R. SCERNI, JR.
ON BEHALF OF PETITIONERS
STUDIO & TOURS and
RONALD P. RAHHAL

DATED: _____

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WILSON AND SCERNI, P. A.
1125 ATLANTIC AVENUE-SUITE
ATLANTIC CITY, N. J. 08401
(609) 347-7301
ATTORNEYS FOR Ronald P. Rahhal
Studio 7 Tours
(Petitioners)

~~Plaintiff~~

IN THE MATTER OF STUDIO 7 TOURS and RONALD P. RAHHAL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

Docket No. 1135-70
4404-21
OAL Docket No. CCC8070-84

CIVIL ACTION

SUPPLEMENTAL STIPULATIONS

Petitioner, Ronaly P. Rahhal, individually, and as principal of Studio 7 Tours, and the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, hereby stipulate as follows:

1. Petitioner and Respondent have previously entered into a 17 paragraph Stipulation. This current supplemental Stipulation is intended to enlarge upon the Stipulations previously filed.

2. Ronald P. Rahhal has represented to the Division that he has made two (2) payments to Mitchell Rahhal in the amounts of $25,000.00 and $25,693.19. These payments were made on May 2, 1985, and June 4, 1985, respectively.

3. Petitioner, Ronald P. Rahhal has represented to the Division in an Affidavit that the June 4, 1985, payment to Mitchell Rahhal represents full satisfaction of monies owed to Mitchell Rahhal from Ronald Rahhal as a result of the purchase of Studio 7 Tours.

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
THOMAS R. O'BRIEN, DIRECTOR

BY: R Lane Stebbins
R. LANE STEBBINS, DAG

WILSON and SCERNI, P.A.

BY: Alfred R Scerni
ALFRED R. SCERNI, JR.
Attorney for Petitioners

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-295
LICENSE NO. 31630-22
OAL DOCKET NO. CCC 1421-85

STATE OF NEW JERSEY, DEPARTMENT
OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

MICHAEL RATTIGAN

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 7, 1985;

IT IS on this 9th day of AUGUST 1985, ORDERED that the initial decision is affirmed substantially for the reasons contained in the initial decision which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement for revocation of the casino employee license of Michael Rattigan be dismissed; and

IT IS FURTHER ORDERED that copies of the final order be served upon Michael Rattigan, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1421-85

AGENCY DKT. NO. 84-295

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW & PUBLIC SAFETY,

Petitioner,

v.

MICHAEL RATTIGAN,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Michael Rattigan, respondent, pro se

Record Closed: June 14, 1985 Decided: June 26, 1985

BEFORE **BEATRICE S. TYLUTKI,** ALJ:

This matter concerns the complaint that the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on September 18, 1984, seeking the revocation of the respondent's license as a casino employee pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Mr. Rattigan requested a hearing and the matter was referred to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference held on April 23, 1985, the parties agreed that the issues are:

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(a) Whether the respondent is disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) based on a certain criminal conviction.

(b) Whether the respondent's continued licensure is inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).

(c) Whether the respondent can establish his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2).

(d) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90h.

At the prehearing conference, the Division was represented by Glenn Stanton, a law clerk appearing pursuant to R 1:21-3. The hearing took place on June 14, 1985, and the Division was represented by Deputy Attorney General William E. Mountford at that time.

Based on the testimony and exhibits received at the hearing, I **FIND** that the pertinent facts in this matter are not in dispute.

When Patrolman Richard Rest arrived at the rear of the Jamesway Department Store in Somers Point on February 13, 1984, a burglary was in progress which involved three men (P-1). Michael Rattigan, respondent, turned himself in, and he was arrested along with John Rattigan and Timothy McSweeney (P-1). All three men were indicted for conspiracy, theft by unlawful taking and three counts of burglary (P-1). On September 16, 1984, the respondent pled guilty to the three counts of burglary and was given an 18-month period of probation and was required to pay a fine of $300. The respondent has paid the fine and has completed approximately one year of the probation period.

As part of his probation, Mr. Rattigan was required to perform 50 hours of community service work and he completed this requirement by doing carpentry work for Atlantic City. In addition, Rattigan has completed the required 11-week educational course for alcohol abusers (R-1) and is attending the required Alcoholics Anonymous (AA) meetings. Also, he voluntarily attends additional AA meetings.

At the time of the hearing, the respondent was 24 years old and not married. By his own admission, the respondent has had a drinking problem for about ten years. Mr. Rattigan has had nothing to drink since the February 13, 1984 incident, and he feels that he has his problem under control and is now a recovering alcoholic. Mr. Rattigan has recently become engaged to be married.

Mr. Rattigan admitted that he was convicted in 1979 of a disorderly person's offense and in 1981 of resisting arrest, and he stated that both of these convictions were related to his drinking problem.

Since June 29, 1981, Mr. Rattigan has been employed by the Claridge Casino Hotel (Claridge). He was initially hired as a bar porter and is currently working as a pump room clerk. All beverages sold at Claridge are pumped through a central computerized system and it is Mr. Rattigan's responsibility to make sure that that system works properly. According to Mr. Rattigan, he has had a good employment record; however, he admitted that he was suspended in 1982 for three days for the improper performance of his duties as a result of his having had a hangover. Prior to his employment with the Claridge, Mr. Rattigan was employed as a construction worker. Currently, in addition to his casino job, the respondent is doing construction work.

Dennis Gitsas, a detective employed by the Atlantic County Sheriff's Department, testified that he has known the respondent as a social friend for several years. Although Mr. Gitsas never saw the respondent drunk, he was aware that the respondent had a drinking problem and that he no longer drinks. Mr. Rattigan now keeps himself busy by working at the Claridge and by doing construction work. It is Mr. Gitsas' opinion that Mr. Rattigan is a good person, that the 1984 incident has had a major impact on his attitude and lifestyle, and that he is now sincerely trying to control his drinking problem.

Bernie Laleyan, who is employed as a banquet bartender at Bally's Park Place Hotel and Casino, indicated that he has known the respondent as a personal friend for approximately eight years and that Mr. Rattigan was his neighbor for awhile. Mr. Laleyan indicated that he was aware that Mr. Rattigan had a drinking problem and that since the 1984 incident, the respondent has turned his life completely around and no longer drinks. According to Mr. Laleyan, the respondent's drinking problem was due partly to the fact

that he frequented bars. The respondent no longer goes to bars but goes to restaurants with his girl friend. According to Mr. Laleyan, when the respondent was drunk he tended to act without thinking.

Evelyn Rattigan, the mother of the respondent, testified that she is employed as a nurse and that she and her husband knew that their son was drinking but were unaware that he had a major drinking problem until the time of the 1984 incident. Mrs. Rattigan knows that her son now attends AA meetings and she has spoken to him several times about his drinking problem. According to Mrs. Rattigan, the respondent was insecure and immature as a boy and had a tendency to form friendships with the wrong people. Mrs. Rattigan has seen a substantial improvement in her son's attitude since the time of the 1984 incident and knows that he no longer drinks. Mrs. Rattigan stated that her son has changed his lifestyle, that he is now engaged and that he and his brother have started a construction business.

On behalf of the respondent, Lynda Kennedy, beverage manager for Claridge, submitted a letter, dated June 13, 1985, in which she indicated that the respondent is now a model and responsible employee, that he has been instrumental in training new employees and that he has given his fullest cooperation to his supervisors (R-2). Ms. Kennedy appeared and was prepared to testify at the hearing; however, she did not testify because the hearing was delayed and she had to leave because of an appointment.

Lastly on his own behalf, Mr. Rattigan stated that the 1984 incident had a major impact on him and that he is now aware that he cannot drink and that when he drinks he is capable of doing foolish things.

In closing, Mr. Mountford stated that the respondent's 1984 conviction for the burglary offenses is not a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and that the questions in this matter are whether the respondent can establish his reputation for good character, honesty and integrity and whether he can establish that he has become rehabilitated. Mr. Mountford was clearly impressed by Mr. Rattigan's candor regarding his drinking problem.

Based on the facts in this matter, I **CONCLUDE** that the Division has not shown that the respondent was convicted of a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) or that his continued licensure is inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(4).

At the hearing, I was impressed by Mr. Rattigan's candid admission that he is a recovering alcoholic, and I believe that he has changed his lifestyle and is sincerely committed to avoiding alcoholic beverages. Therefore, I **CONCLUDE** that Mr. Rattigan has shown that he is a person of good character, honesty and integrity and that he has been rehabilitated since his 1984 criminal activity. Therefore, I **ORDER** that the complaint filed by the Division seeking to revoke respondent's license be **DISMISSED** and that Mr. Rattigan be allowed to retain his license as a casino employee.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 26, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

June 27, 1985
DATE

Bernadette N. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

July 1, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Somers Point Police Department Investigation Report prepared by Patrolman Richard Rest; Somers Point Police Department Supplemental Investigation Report prepared by Patrolman Gary Gray; Arrest Report regarding Michael Rattigan; Complaint filed against Michael Rattigan, and the Criminal Indictment filed against Michael Rattigan, John Rattigan and Timothy McSweeney

FOR THE RESPONDENT:

R-1 Status Report of the T.A.S.C. Program, dated March 20, 1985

R-2 Letter from Lynda Kennedy, beverage manager, Claridge Casino Hotel, dated June 13, 1985

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Michael Rattigan
Dennis Gitsas
Bernie Lalegan
Evelyn Rattigan

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-405
OAL DOCKET NO. CCC 4604-84

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

FINAL ORDER

RESORTS INTERNATIONAL HOTEL, INC.

Respondent.

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the filing of an initial decision by the Office of Administrative Law on January 16, 1985, recommending that Resorts International Hotel, Inc. (Resorts), be assessed a civil penalty of $2,000 for each of two violations of N.J.A.C. 19:50-1.6 (serving alcoholic beverages to two minors) and for each of two violations of N.J.S.A. 5:12-119(a) (permitting two minors on the casino floor) for a total penalty of $8,000 in settlement of the amended complaint filed by the Division of Gaming Enforcement against Resorts with the Commission on April 6, 1984; and the Division of Gaming Enforcement having filed exceptions to the initial decision on February 8, 1985, and Resorts having not replied thereto; and the Commission having considered the entire record of these

proceedings resolved at its public meeting of February 27, 1985, to modify the initial decision;

IT IS on this 24th day of JULY 1985, ORDERED that the initial decision of the Office of Administrative Law be and hereby is modified as follows:

1. The portion of the initial decision ordering Resorts to pay the total civil penalty of $8,000 "on or before the 61st day from the date of this initial decision" is modified to provide that Resorts shall pay the penalty "upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control."

IT IS FURTHER ORDERED that the initial decision, as modified, is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Resorts pay a civil penalty of $8,000 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that copies of this final order be served upon Resorts, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4604-84

AGENCY DKT. NO. 83-405

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW AND
PUBLIC SAFETY,

Petitioner,

v.

RESORTS INTERNATIONAL HOTEL, INC.,

Respondent.

Katherine Smith, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Paul M. O'Gara, Esq., for respondent (Sterns, Herbert & Weinroth, attorneys)

Record Closed: November 29, 1984 Decided: January 16, 1985

BEFORE **VALERIE H. ARMSTRONG**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), filed a Complaint and Amended Complaint alleging that on or about August 4, 1983, two underage patrons were served alcoholic beverages on the Resorts International Hotel (Resorts) casino floor and that one of the underage patrons was thereafter observed gambling at a Big Six table, by a Casino Control Commission (Commission) inspector. The Division's Amended Complaint

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alleged that Resorts violated the following statutes and regulations: N.J.S.A. 5:12-119(a); 5:12-103d; 5:12-103f(2); 9:17-B(1)(b; N.J.A.C. 13:2-23.1(a); 19:50-1.6(a), and 19:50-1.14. Resorts filed an Answer to the Amended Complaint which (1) stated a first affirmative defense alleging that the Complaint failed to state a cause of action upon which relief may be granted, (2) reserved the right to present mitigating factors, and (3) requested a hearing on all issues raised by the Division's pleadings.

This matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing order entered on August 24, 1984, defined the following issues to be addressed at the hearing:

1. Factual findings shall be made as to whether under-age patrons were drinking alcoholic beverages and gambling in Resorts casino on August 3, 1983; and

2. Did Resorts violate the statutes and regulations set forth in the Division's Amended Complaint? If findings are made that Resorts did violate any of the statutes or regulations, what is the appropriate penalty, if any?

A hearing was held on November 29, 1984, in Ventnor, New Jersey.

FINDINGS OF FACT

The following relevant facts are undisputed:

Robert O. Kampert has been employed since April 1978 as the Assistant Director of Security for Resorts. He had previously been employed by the New Jersey State Police for 27 years, where he attained the rank of Station Commander. As the Assistant Director of Security, Mr. Kampert has 166 uniformed security officers under his supervision. In his present employment position, Mr. Kampert checks all security shifts to determine that security personnel are following company and casino regulations and rendering security assistance when needed. Mr. Kampert stated he is "keenly" aware of the Casino Control Commission regulations pertaining to the service of alcohol and gaming, as he is charged with the responsibility of assisting Resorts in complying with the regulations.

The following methods and procedures were utilized by Resorts in August 1983 in an attempt to comply with the statutes and regulations which precluded juveniles from drinking alcoholic beverages and gambling in casinos:

1. A security guard was assigned to each of the approximately nine or ten public entrances to the 60,000 square foot casino floor during the hours that the casino is in operation, for the purpose of deterring juveniles from entering the casino.

2. There were three, eight-hour shifts of security guards employed by Resorts, with roll call being taken before each shift. Approximately three or four times per week at the commencement of each roll call, security guards were reminded of the importance of removing any juveniles from the casino floor quickly and quietly.

3. Because of the problem of juveniles attempting to enter the casino from the Atlantic City boardwalk, double security guards were posted at the boardwalk entrances on the weekends, since approximately 1980.

4. At least five roving security guards were stationed on the casino floor at all times, for the purpose of looking for elderly persons with health problems and juveniles. Extra roving security guards were utilized on the casino floor during the busier times, primarily weekends.

5. The security guards posted at each public entrance to the casino were instructed to require identification from any person who appeared to be underage. Only certain forms of identification were acceptable, preferably a driver's license bearing the person's picture and date of birth. If an individual did not have proper proof of age, he was turned away from the casino entrance and his physical description was broadcast over an internal radio system to other security guards. The same procedures were utilized for persons on the casino floor who appear to be under-age. These persons were physically escorted out of the casino if they could not show proper identification.

6. Resorts sometimes utilized more security guards than required by Casino Control Commission regulations.

7. Extra security guards were posted as needed during a "rush" such as when the Super Star Theatre lets out and more persons attempt to enter the casino.

Intertel, a wholly-owned entity of Resorts, files monthly reports on behalf of Resorts to the Divison of Criminal Justice and the Commission to report, among other things, the statistics pertaining to juvenile activity in the casino as well as attempts by juveniles to enter the casino floor. The statistics are compiled on a daily basis at the end of each security shift. This reporting practice has apparently been in existence since approximately 1980 when the Commission perceived that entry of high school students into the Golden Nugget Casino was a serious problem. The monthly statistics are not

"diluted" or "washed out" and Mr. Kampert noted that the monthly juvenile statistics for all of the Altantic City casinos are substantially similar.

The lawful person capacity of the Resorts Casino as set by the Atlantic City Fire Department is 8,500. There is a constant flow of people in and out of the casino, which is frequently filled to capacity during the summer months. Significantly more juveniles are found on the casino floor or are observed attempting entry to the casino floor during the summer months because schools are closed and the juveniles are usually travelling with their parents.

The following monthly statistics have been reported by Intertel to the Division of Criminal Justice with regard to juvenile activity at Resorts:

	6/83	7/83	8/83	9/83	10/83	7/84
Juveniles escorted from Casino	467	759	864	462	326	659
Juveniles Gambling at Gaming Tables	26	96	57	30	17	130
Juveniles Gambling at Slot Machines	42	122	113	27	27	51
Juveniles Drinking	2	0	2	0	0	0
Juveniles Disorderly	0	1	0	0	0	1
Juveniles attempting entry on Casino floor	4,341 [R-4]	7,380 [R-5]	7,231 [R-6]	3,959 [R-7]	2,854 [R-8]	4,569 [R-9]

The categories on the Intertel reports pertaining to juveniles gambling at the gaming tables or slot machines include those juveniles who are actually gambling or who appear to be about to gamble.

The Director of Resorts Security Department emphasizes to all department heads, his concerns about keeping juveniles out of the Casino and has advocated a strong program to help alleviate the problem.

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This firm policy of evicting juveniles from the casino has alienated many patrons, in particular, those who have previously frequented Las Vegas casinos where children are permitted on the casino floor.

Notwithstanding the measures taken by Resorts to monitor the juvenile problem, it has been possible for juveniles to sometimes gain entry onto the casino floor unnoticed, while a security guard at a casino entrance is questioning the identification of other individuals attempting to gain entry.

Rudolph W. Mazzonelli has been employed for the past six years as the Executive Vice-President of the Food and Beverage Department at Resorts. He has been employed in the food and beverage industry for the past 40 years. He is familiar with the Casino Control Act and the Casino Control Commission regulations as they pertain to the service of food and beverages in the casino industry. Mr. Mazzonelli is generally responsible for all of the alcoholic beverage activity at Resorts, with the responsibility for the Service of alcoholic beverages in specific areas of the hotel/casino being delegated to various department heads in the food and beverage department.

Drinking on the casino floor is not encouraged. Alcoholic beverages are served on the casino floor, pursuant to the Casino Control Act and regulations promulagated thereunder. The method by which a casino patron may obtain a drink is not through the patron's request, but rather, is at the direction of the pit boss who specifically designates which patron may receive a complimentary drink. Complimentary drinks are served by cocktail waitresses who are part of the food and beverage Department. Resorts employs 186 cocktail servers with 110 servers working in shifts of 30 persons per shift on the casino floor.

The following procedures were in effect in the Food and Beverage Department in August, 1983 (and are currently in effect):

1. During the cocktail servers' training period, as well as during general meetings of the cocktail servers held several times per year, Resorts' policy of not serving juveniles alcoholic beverages is reinforced, and the employees are advised of any changes in the law concerning the legal drinking age.

2. All cocktail servers are required to execute an affidavit stating that he/she has received, read and understands the work rules concerning the service of alcoholic beverages to guests who are under 21 years of age. (An example of such an affidavit was marked into evidence as R-2).

3. The work rules concerning the service of alcoholic beverages to persons only of legal age are posted on a sign in every bar in Resorts. (A sample of departmental work rules in effect in January, 1984 was introduced into evidence as R-1. The work rules which were in effect in August 1983, and posted in all the bars were substantially similar to R-1).

4. Mr. Mazzonelli holds regular meetings on a weekly or bi-weekly basis of his department heads and the major food and beverage department employees concerning the operation of his department. At these meetings, any changes in the law and casino policy applicable to the legal drinking age were discussed.

5. Each cocktail server is required to carry on her tray a card reminding her that the service of alcoholic beverages to minors is prohibited, and requiring the cocktail server to request proper identification (R-3).

6. A cocktail server who serves underage guests is discharged from her job.

7. Resorts' corporate president has emphasized to Mr. Mazzonelli, the importance of keeping abreast of the casino industry's rules, regulations and policies.

On August 10, 1983, Mr. Mazzonelli received notification of violation of N.J.A.C. 19:50-1.6(a) due to alleged service of alcoholic beverages to underage patrons on the casino floor on August 4, 1983. On August 12, 1983, Mr. Mazzonelli wrote to William Thistle, Principal Inspector for the Casino Control Commission at Resorts International Hotel, and stated that while he could not dispute the fact that the violation occurred (credibly explaining at the hearing that he could not dispute the violation because he was not personally present when it allegedly occurred), ". . . there is the understandable presumption that, if a patron is gambling, the patron has already passed his minimum of two ID verifications. . . ". Mr. Mazzonelli further stated in his letter that Resorts was not abdicating its responsibility to enforce alcoholic beverage regulations, and that in order to prevent future violations, Mr. Mazzonelli would require his cocktail servers to take the following precautions (P-3):

1. Cocktail servers would be notified that they will be held personally responsible if they serve alcoholic beverages to underage guests.

2. If a cocktail server has any doubt whatsoever about a guest's age, she must request an ID verfication. In the event that the guest refuses to produce the verification, the guest will be advised that he will not be served an alcoholic beverage. The cocktail server must then inform her supervisor of the incident. The supervisor would then be required to report the information to a Resorts' security officer.

Resorts' work rules which are posted on signs in all of the hotel bars are revised annually to reflect any relevant changes in statutes or regulations pertaining to the service of alcoholic beverages.

In August 1983, beverages were served on the casino floor in plastic glasses. Drinking containers used in the bars off the casino floor were glass. Resorts' policy did not permit drinks purchased in a bar off the casino floor to be transported onto the Casino floor.

John R. Kravecz is employed by the Casino Control Commission in Atlantic City, New Jersey, as a Senior Inspector. His employment responsibilities require him to moderate and report on casino gaming activities. On August 4, 1983, Mr. Kravecz was working Resorts' casino floor surveillance on the 4:00 p.m. to 12:00 midnight shift. At 9:00 p.m. he and Inspector William R. Kelly, III were watching gaming activites at the west end of the casino near the Big Six table. Mr. Kravecz saw three male individuals at the Big Six table, whom he felt had young physical appearances indicating that they were under the age of 21 years. This supposition was based upon his five years' experience working on the casino floor observing people. After noting his observation to Mr. Kelly, Kravecz moved closer to the table for a better look. Still suspecting that the three men were under the age of 21 years, he almost immediately located a Resorts' Security Officer whom he asked to check the identification of the three men. In Kravecz' presence, the Resorts' Security Officer obtained their identifications. Mr. Kravecz was standing behind the security officer and could not hear everything the security officer said, however, the three individuals produced Pennsylvania driver's licenses. Kravecz personally inspected two of the licenses which contained photo identification. While Kravecz could not recall the exact words on each of the two driver's licenses, he did write down the licensees' names and addresses on a piece of scrap paper, which paper was ultimately destroyed when Mr. Kelly wrote up a violation report. Kravecz remembered that the last name of one of the two individuals was "Yarbrough" but could not remember the name of the other person without consulting the reports of the incident (P-4, P-5). Kravecz initially asked the Security Officer if the patrons were underage. The Security Officer replied that one of the patrons was not a minor and Mr. Kravecz, after looking at the other two driver's licenses ascertained from the information on the drivers license that two of the patrons (Mr. Yarbrough and Mr. Williamson) were minors.

When Kravecz first observed the three patrons, Yarbrough and Williamson were leaning against the right side edge of the Big Six table. The third individual was standing behind them. The three men were engaged in conversation and were watching the Big Six wheel. Yarbrough and Williamson were each observed holding a glass containing a liquid substance which Kravecz assumed was an alcoholic beverage. Kravecz did not observe whether the third male patron was holding a glass. In the presence of the Security Officer, Kravecz asked Williamson and Yarbrough if they were underage, to which each of them replied in the affirmative, stating they were 18 years old. Kravecz then asked them if they were drinking cocktails. One of them replied that he was drinking a Whiskey Sour and the other stated he was drinking a Rum and Coke. Kravecz described the glasses containing the cocktails as being the standard plastic cups used for service of beverages on the casino floor, each glass bearing a Resorts' logo. Yarbrough and Williamson said they were served the drinks at another location on the casino floor, not in the general area of the Big Six table. After questioning Yarbrough and Williamson, Kravecz asked Inspector Kelly to come to the table and he repeated the same questions to both young men, and he received the same responses from them. Both Williamson and Yarbrough admitted they were 18-years'-old. They also stated that they were unaware of any changes in New Jersey's drinking laws which would prohibit an 18-year-old from consuming alcoholic beverages.

During Kravecz's initial observation, he observed Yarbrough placing gambling chips on the Big Six table. Yarbrough had $2.00 in white chips and $75.00 in red chips in his possession when he produced his identification. Yarbrough and Williamson were escorted by a Resorts' security officer to cash in Yarbrough's chips prior to their eviction from the casino floor.

At the hearing, it was stipulated that on August 8, 1983, a Notice of Discrepancy was served on J. Timothy Smith, Resorts Casino Administrator, by William Thistle, Principal Inspector for the Casino Control Commission, which stated, "Two underage patrons were caught drinking alcoholic beverages on the Casino floor."

Kravecz has been a Senior Inspector for three years. An Inspector is assigned to one casino for three months at a time. As a Senior Inspector, Kravecz does not carry a notebook to write down incident reports, but rather, carries a notebook only for personnel evaluation purposes. In his five years' experience as a Casino Control Commission Inspector, he has never before observed a person on the casino floor whom he believed to

be a minor, drinking an alcoholic beverage. He also is not aware that any of his other inspectors have made such an observation. Kravecz stated that more minors attempt to enter the Casino floor during the summer months than at other times during the year. It is his opinion that the number of security guards assigned to the major entrances off Resorts Casino floor is "frequently insufficient." While he has observed minor persons on the casino floor on many occasions, there has only been one other occasion where he has observed a person whom he believed to be a minor actually gambling. Kravecz noted that as a Commission Inspector, he does not directly approach an underage patron, but rather, his role is to summon a Casino security guard to have the patron identified.

William R. Kelly, III was appointed as a Senior Inspector for the Casino Control Commission on November 14, 1984. Prior to that promotion, he was employed as an Inspector for the Commission for approximately four-and-one-half years. Mr. Kelly's testimony essentially corroborated the testimony of Inspector Kravecz with regard to the events of August 4, 1983. Mr. Kelly wrote down notes of the August 4, 1983 incident in a notebook which is normally preserved by the Casino Control Commission. However, he subsequently lost his notebook containing his notes for the August 4, 1983 incident. Hence, his original notes which were utilized to prepare the August 4, 1983 Inspectors' Questionaires (P-1, P-2) were unavailable for the hearing.

In his capacity as Inspector for Casino Control Commission, he has never observed an underage patron on the Casino floor with an alcoholic beverage, nor has he seen an underage patron gambling in a casino with the exception of the events of August 4, 1984.

Mr. Kelly also observed Mr. Yarbrough placing the chips on the Big Six table and heard both Yarbrough and Williamson admit that they were drinking an alcoholic beverage.

DISCUSSION AND CONCLUSIONS OF LAW

Effective April 13, 1983, N.J.S.A. 9:17B-1b was amended to raise the legally permissible age pursuant to which an individual may purchase and consume alcoholic beverages to 21 years or older, with the exception that ". . .anyone attaining the age to purchase and consume alcoholic beverages legally prior to January 1, 1983, shall retain that right." Those persons who were 19 years old or older prior to the effective date of

the amendment would be permitted to retain the right to purchase and consume alcoholic beverages. N.J.S.A. 9:17B-1c also provided (in August 1983) that the right to attend and participate in casino gaming would be extended to persons ". .. at or over the age at which a person is authorized to purchase and consume alcoholic beverages. . ."

N.J.A.C. 13:2-23.1(a) provides the following:

> No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the legal age to purchase or consume alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

N.J.A.C. 19:50-1.6(a) prohibits a casino licensee from selling, serving or delivering or allowing permitting or suffering the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age at which a person is authorized to purchase or consume alcoholic beverages in New Jersey, and also prohibits the consumption of any alcoholic beverage by such person on licensed premises.

N.J.S.A. 5:12-119a provides "No person under the age at which a person is authorized to purchase and consume alcoholic beverages, other than a person licensed under the provisions of this act in the regular course of his license activities, shall enter a licensed casino except by way of passage to another room."

I **CONCLUDE** that on August 4, 1983, both Yarbrough and Williamson were 18 years of age, and that they were served and consumed alcoholic beverages on Resorts' casino floor. This conclusion is based upon the statements made by Yarbrough and Williamson to Inspector Kravecz wherein they admitted they were 18 years of age, that one of them was drinking a whiskey sour and that the other was drinking a rum and coke. N.J.S.A. 5:12-107a(6) provides that "Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action. . ." Additionally, the residuum rule provides in part ". . .hearsay evidence shall be admissible in the trial of contested cases...

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notwithstanding the admissability of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. 1:1-15.8. There is no question but that the statements of Yarbrough and Williamson as to their age and their receipt of and consumption of alcoholic beverages on Resorts' casino floor is hearsay evidence. It is unnecessary to enter into a prolonged discourse as to whether the statements are sufficient to support factual findings pursuant to N.J.S.A. 5:12-107a6 or the residuum rule, as the statements of Yarbrough and Williamson are clearly admissible pursuant to Evid. R. 63 (10), as declarations against interest. Almost identical testimony was found to be admissible pursuant to Evid. R. 63 (10), in the matter of Packard-Bamberger and Company, Inc., v. Township of West Caldwell (N.J. App. Div., July 6, 1984, A-1256-83T3, unreported). Supportive of the conclusion that Yarbrough and Williamson were served alcoholic beverages on the casino floor is the fact that both Kravecz and Kelly observed that the beverages were contained in plastic Resorts International Hotel glasses, which were utilized on the casino floor.

I further **CONCLUDE** that the facts overwhelmingly support the conclusion that Yarbrough was gambling at the Big Six table on August 4, 1983, insofar as both Kravecz and Kelly observed Yarbrough placing chips on the Big Six table, and further, Yarbrough had $2.00 in white chips and $75 in red chips in his possession.

Having concluded that Yarbrough and Williamson were 18 years of age, and that they were served and consumed alcoholic beverages on the casino floor, and further, that Yarbrough was gambling on the evening of August 4, 1983, I **CONCLUDE** that Resorts violated the following statutes and regulations: N.J.S.A. 5:12-119(a), 5:12-103f(2), N.J.S.A. 9:17-B(1)b and N.J.A.C. 13:2-23.1(a), and 19:50-1.6(a).

Having drawn the above conclusions, it is necessary to now address what sanctions, if any, are appropriate in this case. During closing argument, the Division argued that a first offense of Title 33 of the Revised Statutes, requires a substantial penalty, and may include the suspension of an alcoholic beverage license as well as the imposition of a monetary fine. While the Division did not suggest a specific monetary amount to be imposed as a sanction, the Division argues that N.J.S.A. 5:12-130 requires that consideration be given to the seriousness of Resorts' conduct and the fact that there is no justification for its conduct, prior to assessing the amount of any financial penalty.

On the other hand, Resorts argued that the appropriate sanction in this case (in the event that detrimental factual findings are made) is a financial penalty not to exceed $5000, alleging that it demonstrated sufficient mitigating circumstances to warrant a minimal financial penalty.

N.J.A.C. 19:50-1.14 provides that "Any violation of Title 33 of the Revised Statutes or Title 13 of the New Jersey Administrative Code by an applicant or licensee, or its agents or employees should be grounds for penalty, dispensation, revocation or other disciplinary action by the Commission unless the conduct involved was specifically permitted by the Act or by these regulations." Further, N.J.S.A. 5:12-103d provides that the provisions of Title 33 of the Revised Statutes and the Rules, Regulations and bulletins promulgated by the Director of the Division of Alcoholic Beverage Control shall apply to a casino hotel and casino hotel alcoholic beverage licensee licensed pursuant to the Casino Control Act. Subsection (e) of N.J.S.A. 5:12-103 provides additionally that notwithstanding any provision to the contrary, the Commission may promulgate any regulations or special rulings and findings as may be necessary for the proper enforcement, regulation and control of alcoholic beverages in casino hotels when the Commission finds that the uniqueness of casino operations in the public interest require that such regulations, rulings and findings are appropriate.

N.J.S.A. 5:12-129 provides for supplemental sanctions which are in addition to any penalty, fine or term of imprisonment authorized by law and specifically includes revocation of a casino license, suspension of an operation certificate, or the assessment of civil financial penalties as may be necessary to punish misconduct and to deter future violations. I **CONCLUDE** that sanctions must be imposed against Resorts, insofar as the factual findings and conclusions in this initial decision clearly demonstrate that Resorts has violated numerous state statutes and the regulations promulgated pursuant to those statutes. However, in considering the nature and severity of the sanctions to be imposed, the criteria set forth in N.J.S.A. 5:12-130 must be carefully considered. Hence, I have evaluated the following section 130 criteria and draw the following conclusions:

A. The risk to the public and to the integrity of gaming operations created by Resorts' conduct on August 4, 1983. The testimony was undisputed that this was the first violation of underage patrons gambling and drinking alcoholic beverages in a casino, prosecuted by the Division. The events of August 4, 1983 appear to be an isolated incident, there being absolutely no suggestion of similar prior conduct or subsequent conduct on the part of

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Resorts sufficient to give rise to a complaint being filed by the Division. A course of such continuing conduct, i.e. a failure to evict underage patrons before they are able to enter the casino and purchase alcoholic beverages would clearly create a risk to the general public and to the integrity of gaming operations. However, an isolated incident such as the one involved in this case does not create a continuing risk.

B. The seriousness of Resorts' conduct and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of the Casino Control Act or regulations. Clearly, the service and consumption of alcoholic beverages in a licensed casino by two underage patrons, and the actual entry into a casino by two underage patrons (one of whom proceeded to gamble), is a serious offense. However, based upon the testimony of Mr. Mazzonelli and Mr. Kampert, both of whom elaborated upon the detailed precautions undertaken by Resorts in order to prevent the entry of juveniles into the casino, it is difficult to conclude that Resorts' conduct was purposeful. Unfortunately, there were no proofs submitted as to which of Resorts' employees were responsible for the entry, service of alcoholic beverages, and sale of gambling chips to the two underage patrons, however, it is clear from the testimony of Resorts' witnesses that Resorts' employees, are periodically advised of their responsibility to preclude juveniles from entering a casino or from purchasing alcoholic beverages and that failure to take appropriate action could jeopardize the employee's job.

C. Any justification or excuse for Resorts' conduct. Resorts conceded at the hearing, that if in fact violations of the Casino Control Act, regulations promulgated thereunder, and violations of Title 33 of the Revised Statutes are found to have occurred on August 4, 1983, there is no excuse or justification for Resorts' conduct. However, there are mitigating factors to be considered, specifically, the detailed juvenile statistics presented by Resorts. There is no question from the testimony presented, but that the monitoring of persons entering the casino is a major undertaking, particularly during the summer months. The juvenile statistics speak for themselves, and I note that during the month of August 1983, there were in excess of 8,000 juveniles who engaged in activities or conduct which violated various provisions of the Casino Control Act. Furthermore, as a practical matter, notwithstanding that the security employees and cocktail servers are periodically warned and educated as to the necessity of controlling juvenile activity, it is unrealistic to assume that human error will not occur. Obviously, human error occurred on the evening of August 4, 1983, although, it is somewhat disturbing to understand how the youthful appearances of Yarbrough and Williamson managed to remain unnoticed by the

security guard posted at the public entrance, roving security guard on the casino floor, pit boss, cocktail server, and dealer. However, overall, the statistics presented by Resorts as to the substantial juvenile problem and the fact that this is apparently Resorts' first violation for underage patrons gambling and drinking alcoholic beverages, is impressive. While I note that Inspector Kravecz stated that in his opinion the number of security persons posted at the major entrances is frequently insufficient, there was no evidence presented at the hearing to suggest that security at the entraces to the casino or on the casino floor was insufficient on the evening of August 4, 1983. Also a minor tribute to the Atlantic City casino industry, was the testimony of both Inspector Kravecz and Inspector Kelly that during their combined nine and one-half years of casino inspector experience, they have never observed underage patrons in the casinos drinking alcoholic beverages.

D. Prior history of Resorts with respect to gaming activity. Most of the factors set forth in subsection C directly above, are relevant to this consideration. Additionally, also relevant is the fact that this matter apparently involves the first instance of prosecution of any Atlantic City casino for a violation of permitting underage patrons to gamble in the casino.

E. Corrective action taken by Resorts to prevent future misconduct of a like nature from occurring. While there was no precise testimony at the hearing as to specific remedial actions taken by Resorts with regard to prevention of entry by juveniles into the casino as a result of the August 4, 1983 incident, the juvenile statistics set forth in the Intertel reports, reveal significantly fewer juvenile problems encountered by Resorts in July 1984 as compared to July 1983. Unfortunately, I cannot attribute much weight to those statistics, since it is not known whether the statistics are attributable to specific remedial action on the part of Resorts, or simply due to random factors. With regard to remedial action concerning the service of alcoholic beverages to juveniles, I note that Mr. Mazzonelli's letter to Mr. Tbistle (P-3) revealed what steps Resorts would take to prevent future violations. It is difficult to fathom what additional remedial steps Resorts could conceivably undertake (noting that the remedial steps were not that much different from the policy in effect at the time of the violation) which would alleviate any further problem.

In considering the severity of the offenses, offset against all the mitigating factors presented by Resorts, and taking into account the unique nature of the casino inductry with regard to the extraordinary numbers of persons flowing into and out of the

casino on a daily basis, I **CONCLUDE** that the appropriate sanction in this case is a reasonable but minimal fine for two violations of N.J.A.C. 19:50-1.6 in that Resorts did sell alcoholic beverages to two minors (therefore resulting in the consumption of those beverages), and for two violations of N.J.S.A. 5:12-119(a). I note that the testimony of Kravecz and Kelly, and the closing arguments rendered by both parties, focused upon the fact that Yarbrough was observed gambling. However, N.J.S.A. 5:12-119 does not refer to a prohibition against juveniles gambling in the casino, but rather makes the mere presence of a juvenile in the casino a violation of the Casino Control Act. N.J.S.A. 9:17B-1c establishes that the right to participate in casino gaming does not exist until the individual is of legal age to purchase and consume alcoholic beverages. The Casino Control Act as well as the regulations promulgated thereunder, do not specifically prohibit juveniles from gambling in the casinos, however, I have construed the provisions of N.J.S.A. 5:12-119a when read in conjunction with N.J.S.A. 9:17B-1c to infer that gambling by juveniles in a casino is obviously prohibited.

I therefore **CONCLUDE** that a $2,000 penalty for each of the four violations, or a total of $8,000 is appropriate under the circumstances of this case. While the mitigating factors presented by Resorts were impressive, the fine is necessary to impress upon Resorts' its continuing obligation to monitor and control juvenile activity in the casino. In passing, I note that I have not recommended a suspension of Resort's liquor license or casino license, nor have I imposed a financial sanction calculated through a formula which would utilize Resorts' gross liquor sales (sometimes utilized as a sanction by the Director of Alcoholic Beverage Control) primarily due to Resorts' good faith attempts to control the juvenile problems and due to the unique nature of the casino industry.

ORDER OF DISPOSITION

It is therefore **ORDERED** that Resorts International Hotel Casino shall pay a penalty of $8,000 to the Casino Control Fund on or before the 61st day from the date of this initial decision.

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 14, 1985
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

January 16, 1985
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

JAN 22 1985
DATE

Ronald L. Parker/pmc
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

P-1 Casino Control Commission Inspectors' Questionnaire—Misc., dated August 4, 1983, re: Violation of N.J.A.C. 19:50-1.6(a)

P-2 Casino Control Commission Inspectors' Questionaire-Misc., dated August 4, 1983, re: Violation of N.J.S.A. 5:12-119

P-3 Letter from Rudy Mazzonelli to William Thistle, dated August 12, 1983

P-4 Inspector Kelly's handwritten Inspectors' Questionnaire, dated August 4, 1983, re: N.J.S.A. 5:12-119

P-5 Inspector Kelly's handwritten Inspectors' Questionnaire, dated August 4, 1983, re: N.J.A.C. 19:50-1.6a

R-1 January, 1984 addendum to departmental work rules

R-2 Acknowledgement of receiving addendum to departmental work rules concerning the service of alcoholic beverages to guests who are under the age of 21

R-3 Reminder notice to cocktail servers

R-4 Intertel report to Division of Criminal Justice, dated July 1, 1983

R-5 Intertel report to Division of Criminal Justice, dated August 3, 1983

R-6 Intertel report to Division of Criminal Justice, dated September 2, 1983

R-7 Intertel report to Division of Criminal Justice, dated October 3, 1983

R-8 Intertel report to Division of Criminal Justice, dated November 1, 1983

R-9 Intertel report, to Division of Criminal Justice, dated August 3, 1984

WITNESSES

For the Petitioner:

John R. Kravecz

William R. Kelly, III

For the Respondent:

Rudolph W. Mazzonelli

Robert O. Kampert

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-86
APPLICATION NO. 44424-21
OAL DOCKET NO. CCC 04462-84

APPLICATION OF JAMES R. SADIE
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE, SOLE
OWNER/OPERATOR JUNKET ENTERPRISE)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the filing of an initial decision by the Office of Administrative Law; and the applicant having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of October 2, 1985,

IT IS on this 18th day of OCTOBER 1985, ORDERED that the initial decision is modified as follows:

1. The Administrative Law Judge concluded that Sadie is disqualified pursuant to N.J.S.A. 5:12-86(g) as a consequence of his having engaged in activities which violated Alabama and New Jersey statutes prohibiting possession of gambling records. The ALJ declined to rely upon N.J.S.A. 5:12-86(c)(1) as a basis for disqualification because Sadie's conviction for possession of gambling records is on appeal in Alabama. The ALJ's conclusion not to find the applicant disqualified pursuant to N.J.S.A. 5:12-86(c)(1) is rejected as being contrary to accepted Alabama and New Jersey law and

the Commission concludes that the conviction for possession of gambling records constitutes a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1).

2. The Administrative Law Judge concluded that the applicant was disqualified pursuant to N.J.S.A. 5:12-86(c)(4). The Commission concludes that since the applicant was convicted of an enumerated offense under N.J.S.A. 5:12-86(c)(1), the ALJ's finding that this same conviction is inimical under N.J.S.A. 5:12-86(c)(4) is rejected.

IT IS FURTHER ORDERED that the casino employee license application of James R. Sadie is denied substantially for the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that James R. Sadie is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon James R. Sadie, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4462-84

AGENCY DKT. NO. 84-EA-86

JAMES R. SADIE,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Alfred R. Scerni, Jr., Esq., for petitioner (Wilson, Jacobson, Winkelstein & Scerni, attorneys)

Stephen Scirllo, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: June 15, 1985 Decided: July 25, 1985

BEFORE **JEFF S. MASIN,** ALJ:

James R. Sadie applied to the Casino Control Commission (Commission) for licensure as a casino employee with the position designation of junket representative, sole owner/operator junket enterprise. The Division of Gaming Enforcement (Division) opposed licensure by letter dated April 26, 1984. Mr. Sadie requested the hearing on the proposed denial on June 6, 1984. The matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 7, 1984 and a prehearing order was issued on August 17, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin on June 18, 1985 at the Camden County Hall of Justice in Camden. The record closed following completion of testimony on June 18.

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ISSUES

The Division objects to Mr. Sadie's licensure because of certain activities carried on by Mr. Sadie in his home state of Alabama pertaining to sports betting. Mr. Sadie was convicted in a bench trial of violating Alabama Criminal Code, Title 13A-12-24 (a), possession of gambling records in the first degree, on May 20, 1983. He was sentenced to a $500 fine. He was then found guilty by a jury on an appeal from the original May 1983 conviction. The sentence following the jury verdict was the same as that set by the judge in the first trial. Mr. Sadie appealed his conviction to the Alabama Court of Criminal Appeals. That court heard oral argument on the case in late 1984 and the case has been pending decision by the Court of Appeals since that time. As of the date of this hearing, which has been postponed several times in anticipation of a decision from the Alabama Court of Criminal Appeals, the decision on appeal is still pending. It is anticipated that should the Alabama court issue a ruling on the appeal prior to the disposition of this case by the Casino Control Commission that the decision of the Alabama court will be made part of the record for the Commission's consideration.

The prehearing order designates a number of issues arising under the Casino Control Act, N.J.S.A. 5:12-1 et seq., which are relevant in determining whether Mr. Sadie may be licensed for the position which he seeks. Specifically, the Division argues that Mr. Sadie fails to meet the standard for good character, honesty and integrity, required by N.J.S.A. 5:12-89(b), as incorporated by Section 90(b) and 102(b). The Act requires that an applicant for licensure establish good character, honesty and integrity by clear and convincing evidence. In addition, the Division argues that Mr. Sadie's conviction for possession of gambling records in the first degree constitutes an offense equivalent to a disqualifying offense under Section 86(c)(1) of the Act and therefore requires denial of licensure.

Mr. Sadie argues that he has rehabilitated himself from any adverse affects of his Alabama conviction or the underlying facts upon which the conviction was based. In addition, at least at the present time, he argues that since an appeal is pending in Alabama there is no present conviction which could constitute a disqualifying offense under Section 86(c)(1).

DECISION

While the facts set forth below indicate that Mr. Sadie has been otherwise a responsible, law-abiding individual with a quite respectable past history, given the nature of his involvement in sports gambling and the type of activities in which he has engaged, his license cannot be granted.

As will be further explained below, the grounds for Mr. Sadie's appeal of his criminal conviction relate to questions dealing with an allegedly unlawful search and seizure, alleged violations of the Miranda rules, and contentions that the records seized may not have been gambling records under Alabama law. However, Mr. Sadie's testimony at the present hearing, as well as the information provided to the Division during a sworn interview on March 20, 1984, clearly indicate that Mr. Sadie did engage in the placement of bets with bookmakers on a wholesale basis and that he not only placed bets on his own behalf but also accepted bets from other individuals and placed those bets with bookmakers. Given the illegal nature of the bookmakers operation, an illegality which Mr. Sadie was aware of, and given the fact that Sadie acted in frequent situations as a conduit for the placing of bets with bookmakers, it is apparent that his activities aided and fostered, promoted and encouraged the bookmaking schemes or enterprises. While the mere occasional placement of a bet with a bookmaker in and of itself is not a crime either in Alabama or New Jersey, Sadie's activities went far beyond this kind of random limited involvement to one which was regular, businesslike and habitual. Although Mr. Sadie characterized his involvement in sports betting as a "hobby," such an activity, engaged in on the scale and in the manner in which Sadie operated, was in actuality something more than a mere occasional pastime carried on in a totally innocent fashion.

While one might argue that the type of sports betting involved here ought to be legal and Sadie's activities were no doubt carried on, as he indicated, by numerous other otherwise perfectly law-abiding and often prominent individuals, given the illegal nature of the bookmaking operations with whom the bets were placed, and the way in which Sadie acted, it is my opinion that his licensure would be inimical. Where an individual seeks licensure to take part in any significant way in a state regulated gambling operation such as the casino industry in Atlantic City, and where the individual has only recently been convicted of, and more importantly admittedly engaged in, acts which further illegal gambling operations in another state, it would be incongruous to allow the individual to be licensed.

For the reasons set forth, I **CONCLUDE** that Mr. Sadie failed to establish the requisite good character, honesty and integrity required for licensure and further that his licensure would be inimical to the policies of the Casino Control Act and the operations of the casino industry.[1] In addition, I **CONCLUDE** that he has failed to establish that he has rehabilitated himself from the adverse affects of his prior actions so as to permit licensure, pursuant to N.J.S.A. 5:12-90(h).

THE EVIDENCE

The Division of Gaming Enforcement's evidence consisted of a certified copy of the court records of the Alabama Unified Judicial System evidencing Mr. Sadie's conviction on the charge of possession of gambling records in the first degree. In addition, the Division offered a transcript of its deposition of Mr. Sadie on March 20, 1984 and photocopies of certain records which had been seized from Sadie in Alabama and which evidenced his gambling activities.

The respondent testified that he is 51 years old and has lived in Montgomery, Alabama since 1958. He attended West Virginia University, although he did not receive a degree. He spent two years in the Marines from 1953 to 1955 and was honorably discharged. Thereafter he was employed in the insurance business for 24 years and is now retired from that occupation. In addition, for the past ten years or so he has operated a travel agency. He was married in 1957 and is the father of nine children.

Mr. Sadie testified that he is active in the Catholic Church, having for many years been an active member and officer of the PTA at his children's schools, a member of the music board, and otherwise active in any way that he could be. In addition, Sadie has been involved with charitable organizations helping handicapped children, the March of Dimes, and the Special Olympic's Program. He also has organized and operated Las Vegas charity nights for such organizations as the Wives of Deceased Military Officers, professional associations, and other charitable groups. He estimated that over the last several years he has raised upwards of $40,000 to $70,000 a year through his charity work, for which he has received no payment.

In 1982 Mr. Sadie was arrested for possession of gambling paraphernalia. The arrest took place in his office. Sadie testified that at the time of his arrest he was questioned by the police officers about individuals who went on his junkets to Atlantic City and Las Vegas and was made offers that there would be no publicity, television

coverage or other public notice concerning his arrest if he would give the police information from his records. The police were seeking information about who went on the trips, what they gambled, etc.

Sadie explained that he was arrested following the issuance of a search warrant which was obtained based on certain papers that were found in his trash. Among the records that were seized by the police when they raided his office were a five year supply of what are commonly known as Gold Sheets, which are information sheets concerning football games, and assorted information about the teams playing, coaches, past records of teams under various conditions, etc. Sadie explained that he had these records in his possession for research and study for a book that he was writing about famous football coaches. In addition, the Gold Sheets, which were usable as research material for the book, also were used by Sadie in connection with his hobby, which was betting on sports. Sadie noted that as to these Gold Sheets, he had misplaced them and did not know where they were at the time of the raid.

Mr. Sadie testified that he no longer gambles on anything and shys away from anyone who is involved in gambling. At the time of his arrests, he did not think he had done anything wrong when he bet on sports.

Although Mr. Sadie did not specifically allege that his arrest was a result of any impropriety, he did note his belief that the arrest may have had something to do with the fact that there was an election for governor taking place ten days after the date of his arrest and that the Mayor of Montgomery was running for governor and Sadie, who was apparently of some degree of prominence, was not supporting the Mayor. Sadie indicated on cross-examination that he believed that as a result of his arrest an unnamed bookmaker was "permitted" to continue operations because the bookmaker had provided the police with the names of Sadie and five other businessmen who also gambled. It should be noted that Mr. Sadie's comments with respect to the circumstances of his arrest and his feelings about the surrounding situation were non-specific and did not detract from the admissions made by Sadie concerning his conduct.

On cross-examination Mr. Sadie was asked to review documents which were seized from him at the time of his arrest. These had also been reviewed with him in a sworn interview which took place on March 20, 1984 with deputy attorney generals assigned to the Division of Gaming Enforcement These records, which were introduced in

evidence, were, according to Sadie's own testimony, largely records of bets which he had made on various football and baseball games with individuals in Alabama and Tennessee. At least five of the individuals with whom bets were made were bookmakers. Sadie explained, without going into great detail in this discussion, that on a regular basis, he bet large amounts of money, running into the thousands of dollars per week, on sports. This activity was carried on as a "hobby". While he did make bets with non-bookmakers on a regular basis, the majority of his betting took place with bookmakers, whose operations were not legal in Alabama. In addition to occasional "friendly" bets with business associates and friends, Mr. Sadie also sometimes accepted requests from friends to place bets with bookmakers. Thus, as an example, Sadie testified that one of his best friends, who happened to be a Catholic priest, bet with some regularity and would not himself call a bookmaker. The priest would give his bets to Sadie who would contact one of his bookmakers and place the bet for the priest. Sadie undertook to place bets for other individuals as well and on occasion others would place bets for Sadie in a similar manner.

Sadie reviewed the notations on the various pages of Exhibit R-4b, which consists of photocopies of pages of a notebook seized by the police and admittedly in Sadie's handwriting. These notations refer to various football and baseball games and indicate initials which are those of friends and/or bookmakers with whom Sadie was betting. The amounts of the bets are also shown. Frequently a number is indicated, such as 4, which Sadie admitted often stood for $400, rather than $4. According to Sadie's testimony the bets which he placed with the bookmakers, making up the vast majority of the bets noted on the pages of the notebook, were bets in the hundreds of dollars. On a usual week, Sadie would bet hundreds or perhaps thousands of dollars, usually betting substantial amounts on both sides of a game in order to give himself the best chance of winning.

Mr. Sadie described his activities as a bettor as "recreational" in nature and both a "hobby" and a "challenge." He found it "relaxing" and "he loves it." He denied that he attempted to hide the notebook from the police at the time that they raided his office. He also denied that he was a bookmaker himself, although he did indicate that he knew a good deal about how bookmakers operated, both from speaking to his contacts who were bookmakers and also from observations made on trips to Las Vegas, where sports betting is legal and bookmakers operate legally.

Mr. Sadie denied that he made a living through sports betting. He noted in his sworn interview that he had "20 business people calling me up and wanted me to handle their bets for them, and I said I am not a bookmaker."

Warren S. Reese, Jr., Esq., an attorney in Montgomery, Alabama for in excess of 50 years and Mr. Sadie's counsel on the appeal of his criminal conviction to the Alabama Court of Criminal Appeals, testified concerning the status of Mr. Sadie under Alabama law. He explained that in Alabama a finding of guilt resulting in a judgment of conviction is held in abeyance pending the appeal process. The conviction, which would act to revoke citizenship, does not become final until the appeal has been concluded.

Mr. Reese also testified as a character witness. He has known Mr. Sadie for 20 to 25 years and has lived in the same community as Sadie during that time. He has a high opinion of Sadie's good character, honesty and integrity, describing the applicant's integrity as "the highest." This opinion is indicative of Mr. Sadie's general reputation in the community.

Mr. Reese has given Sadie casual legal advice in the past, but has never represented him in a court proceeding prior to the appeal to the Court of Appeals. Although Reese was present at the District and Circuit Court trials, he did not act as counsel in those proceedings. Reese previously has gone on a Sadie run junket, although he did not gamble himself.

Margaret L. Reese, wife of the previous witness, testified that she has known Sadie for 20 years and has been a resident herself of Montgomery, Alabama for some 30 years. She described the applicant as having the "best character" and an excellent reputation. He has done a great deal of charity work and Mrs. Reese has worked with him on several of these charitable activities, such as Las Vegas nights for the Boys' Clubs, the Catholic Ladies Association, the Bar Association, etc.

DISCUSSION

A review of the evidence presented in this hearing reveals without question that Mr. Sadie, by his own admission, engaged heavily in sports betting. The great majority of his bets were placed with known bookmakers who were conducting a business which Mr. Sadie knew to be illegal. In addition to placing his own bets with the

bookmakers, Sadie took it upon himself, perhaps as a favor to friends, to place their bets with the bookmakers on occasion. Sadie bet in the hundreds and thousands of dollars on a weekly basis. He kept considerable records with respect to the bets which he made and consulted with various sources to determine the odds and the background and histories of teams, coaches and rivalries in order to determine upon whom to bet.

At the present, Mr. Sadie has been convicted both by a judge in a District Court level proceeding and by a jury in a Circuit Court appeal in Alabama. His conviction has been appealed to the Alabama Court of Criminal Appeals which has not, as of this date, filed its decision. According to evidence presented, which stands unrefutted, Sadie is not yet considered by the State of Alabama to have a criminal conviction, as his conviction is under appeal. Whether he ultimately will win the appeal, which is based on "technical" grounds, is of course uncertain at this time. However, the conduct in which Sadie engaged, and which he does not dispute, is available for review at this time and the nature of the conduct itself will not be affected by whether it ultimately results in a criminal record for the applicant or not. It is upon that underlying conduct that Sadie's good character, honesty and integrity must be considered, as well as his claimed rehabilitation.

Alabama statute 13A-12-24, possession of gambling records in the first degree, of which Mr. Sadie presently stands convicted, subject to the appeal, states:

> (A) A person commits the crime of possession of gambling records in the first degree if with knowledge of the contents thereof, he possesses any writing, paper, instrument or article: (1) of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and constituting, reflecting or representing more than five bets, or more than $500; . . . .

The essentially equivalent New Jersey statute, N.J.S.A. 2C:37-3(a), states:

> a. A person is guilty of possession of gambling records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:
>
> (1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, . . .;

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2C:37-3(b) indicates the defenses available to one charged with possession of gaming records. Among these defenses is:

> (2) It is the defense to a prosecution under subsection a. which must be proven by the defendant by clear and convincing evidence that the writing, paper, instrument, or article possessed by the defendant was neither used or intended to be used in the operation or promotion of a bookmaking scheme or enterprise, ...

Possession of gambling records in a bookmaking scheme or enterprise constituting, reflecting or representing more than five bets totaling more than $1,000 is a crime of the third degree. Such an offense is punishable by a fine of not more than $25,000 or other appropriate dispositions set forth in the sentencing statutes.

According to Mr. Sadie's own testimony, the records in his possession were indicative of more than five bets made with bookmakers, which totaled well in excess of $1,000. Indeed, as he noted, his bets with bookmakers frequently totaled into the thousands of dollars per week. The bets were made on a varying number of sports contests, but in any case as Sadie admitted, did reflect more than five bets. Therefore, under the relevant portions of the New Jersey statute, Mr. Sadie's activities would constitute violations of that statute unless Sadie were able to establish that the records he kept were not used in the operation or promotion of a bookmaking scheme. Under the Alabama statute, the same type of defense would be available. Sadie's own admissions as to the number of bets and the amounts thereof indicate that he meets the criteria of the Alabama statute for the number and amount of bets which would be violative of the statute.

An examination of Mr. Sadie's conduct indicates that his actions, while they are not indicative of his actual running of a bookmaking operation, certainly helped to promote such operations. Not only did Sadie bet with bookmakers on a regular basis, an activity which clearly promotes a bookmaking scheme, for if the bettors did not place bets with the bookmakers there would be no such operations, but more importantly and significantly for the purposes of this proceeding, Sadie was not only betting with the bookmakers for himself, but was acting as a conduit for others who wished to place bets with bookmakers. In this sense, Sadie's records of the bets which he made for others with bookmakers would constitute records of a kind used in promoting a bookmaking scheme. While Sadie was been formally employed in any sense by a bookmaker to act as an agent for the bookmaker, his actions in passing on bets for others who either did not have direct

contact with the bookmakers themselves, or, as in the case of the priest, were perhaps too embarrassed to call the bookmakers directly, aided the bookmakers' operations. Presumably the bookmakers stood to make some profit from the bets placed with them through Sadie, and even if they did not make such a profit, their operations were clearly promoted by his actions. While there is no certainty that Sadie's refusal to pass the bets on to the bookmakers would have prevented the bets from being made with those bookmakers, given the facts here, I must **FIND** that Sadie's records do constitute records which are the subject of the New Jersey and Alabama statutes. Therefore, although his conviction may ultimately may not be affirmed, I **FIND** that Sadie engaged in actions which did aid in the promotion of bookmaking schemes and enterprises in violation of Alabama law and that his actions would have constituted violations of New Jersey law had he done the same thing in New Jersey. It is in light of this finding that his good character, honesty and integrity must be assessed.

It would be foolhardy to say that one automatically fails the test for establishing good character, honesty and integrity, even by the heavy burden of clear and convincing evidence, if one merely places an occasional bet with a bookmaker. There are no doubt, as the evidence in this case has hinted at, numerous otherwise perfectly law-abiding citizens who have on occasion, some more than others, placed bets with such enterprises. If all that this case involved were Sadie's admission of an occasional bet with a bookmaker it would be difficult for the Division to contend that he did not otherwise have good character, honesty and integrity. Mr. Sadie's background, both in terms of his work experience and his numerous charitable activities, indicates that he has generally been a good citizen, and the testimony concerning his reputation from Mr. and Mrs. Reese, when combined with his own testimony concerning his activities and Mrs. Reese's knowledge of his charitable works, certainly is indicative of one who would have a reputation for good character, honesty and integrity. Without the taint of the gambling activity, Sadie would no doubt qualify for licensure under the good character, honesty and integrity criteria.

When an individual engages in activity with persons who he knows to be involved in illegal enterprises, that person runs a serious risk of tainting his own character. It is bad enough to encourage and aid illegal enterprises by entering an occasional bet. However, it is only where one is as involved as Sadie was on a continuous, almost habitual basis for a number of years with the placing of bets and the passing of bets to illegal bookmaking operations that one's character truly is at risk. When Mr.

Sadie's character, honesty and integrity are judged in the context of his actions in the gambling field and when one considers that he seeks to be licensed for a sensitive role in a legal gambling operation of massive proportions, the significance of the involvement with illegal gambling enterprises is enhanced. Therefore, although otherwise impressed with Mr. Sadie's background and reputation, I must regretfully determine and conclude that he has not established by clear and convincing evidence the necessary good character, honesty and integrity required for licensure. It would be incongruous to hold that one who has resorted to illegal gambling enterprises and has aided their activities both with respect to his own and others bets on a large scale for several years could be considered to have the necessary integrity to pass muster for licensure.

In view of Mr. Sadie's failure to meet the good character, honesty and integrity test of N.J.S.A. 5:12-89(b)(2), as incorporated by reference in Section 90(b), his license must be **DENIED.**

Although the Division did not directly raise the question of whether Mr. Sadie's activities indicated that his licensure would be inimical because the Division was contending that he had been convicted of a statutory disqualifying offense, given the pendency of his appeal and the possibility of the conviction being overturned, some consideration must be given to whether Sadie's licensure would be in violation of the policies of the Casino Control Act and the best interests of the casino industry. On these grounds I also **CONCLUDE** that his licensure must be **DENIED.** Again, it seems that to license an individual for a role in a legal gambling enterprise, albeit not a direct role, where one has regularly engaged in an illegal business transaction of a gambling nature with an enterprise which the individual knew to be illegal, would be improper. The goals of the Casino Control Act cannot be furthered by authorizing individuals such as Mr. Sadie to be licensed. While it is true that the type of betting that Sadie did, and which he helped others to do, would have been legal had he carried it on in legal betting parlors in Las Vegas, in Alabama his actions were clearly illegal and he knew that the bookmakers with whom he dealt were conducting illegal businesses. Mr. Sadie did not hesitate to engage in such transactions on a regular, almost businesslike basis. Therefore, I **CONCLUDE** that it would be inimical to permit him to hold a New Jersey license.

If Mr. Sadie's conviction is upheld the question will arise as to whether he has rehabilitated himself. He has testified that he has not gambled since he was arrested. His criminal case has been pending and is presently under appeal and he has not as of yet

actually completed the criminal process. Mr. Sadie expressed the strong conviction that he did not consider that he was doing anything wrong at the time that he engaged in his betting with known illegal operations. He further indicated that he enjoyed the betting and that it was a hobby with him. While it is posible that he will never again resort to illegal gambling operations to satisfy his interests in this area, I believe that it is far too early to conclude that Sadie has rehabilitated himself. Although the offenses involved did not involve any violence or physical or property harm, they were nevertheless gambling offenses. We are dealing with a question of licensure in the gambling and gambling related field. Therefore, the convictions are of a serious nature. In addition, they are recent (indeed in a technical sense may not have even yet formally occurred). Mr. Sadie was a mature individual with many years of experience when he engaged in this type of activity. Although there is some testimony in the case indicating that the kind of activity in which Sadie engaged was prevalent among individuals of his social status in the State of Alabama, and while that same fact may be true in other areas, including New Jersey (there is no evidence in the case however to establish this) such facts do not serve as a defense and only serve as a partial mitigation of Sadie's conduct.

Given all of the circumstances and particularly in light of Mr. Sadie's heavy involvement, I **FIND** that it is too early to conclude that he has rehabilitated himself from the adverse affects which arise from the potential conviction in Alabama.

CONCLUSION

For the reasons expressed I **CONCLUDE** that Mr. Sadie engaged in activities which violated Alabama and New Jersey statutes prohibiting the possession of gambling records. Further, I **CONCLUDE** that Sadie has failed to establish by the requisite clear and convincing evidence the necessary good character, honesty and integrity for licensure. While the current status of his criminal matter in Alabama is in limbo and it therefore cannot be clearly said that he has been convicted of a statutory disqualifying offense, by the time this decision is reviewed by the Casino Control Commission that status may have been clarified so that he may indeed stand convicted of a statutory disqualifying offense requiring denial of licensure. If indeed that be the case, I **CONCLUDE** that he has not established that he has at this time rehabilitated himself sufficiently to be licensed. Finally, I **CONCLUDE** that Sadie's conduct was such as to make his licensure inimical to the policies of the Casino Control Act and the best interests of the casino industry. For these reasons, it is **ORDERED** that the application for licensure be **DENIED**.

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 25, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

July 26, 1985
DATE

Bernadette T. Fripp
CASINO CONTROL COMMISSION

Mailed to Parties:

July 29, 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Book published by Mr. Sadie concerning dog racing (1984)

On behalf of respondent:

R-1 Personal History Disclosure Form - 2A with attached Junket Representative PHD-2A Attachment

R-2 Photocopy of Alabama statute 13A-12-24

R-3 Case Action Summary (Criminal), State of Alabama, Unified Judicial System, Department of Court Management, 2 pages

R-4a Sworn Interviews of James R. Sadie, March 20, 1984

R-4b Photocopy of pages from notebook, 10 pages

R-4c Yellow sheet of paper prepared by Mr. Sadie as example of certain records kept with respect to bets

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-301
OAL DOCKET NO. CCC 7743-84
LICENSE NO. 45656-21
REGISTRATION NO. 44601-40

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ILUMINADO MATOS SANTIAGO,
A/K/A ILUMINADO MATOS,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 19, 1985,

IT IS on this 1st day of AUGUST 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration and casino employee license of Iluminado Matos Santiago, a/k/a Iluminado Matos, is dismissed based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Iluminado Matos Santiago, a/k/a Iluminado Matos, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7743-84
AGENCY DKT. NO. 84-301

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,
Petitioner,
v.
ILUMINADO MATOS SANTIAGO, A/K/A ILUMINADO MATOS,
Respondent.

Paul Vagianos, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Iluminado Matos Santiago, a/k/a Iluminado Matos, respondent, pro se

Record Closed: January 21, 1985 Decided: March 7, 1985

BEFORE **VALERIE H. ARMSTRONG**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On December 28, 1984 the Division of Gaming Enforcement (Division) filed an Amended Complaint seeking revocation of respondent's casino hotel employee registration and casino employee license, alleging that on February 15, 1984, he was arrested and charged with possession of marijuana, in violation of N.J.S.A. 24:21-20a(4); possession of drug paraphernalia, in violation of N.J.S.A. 24:21-47; possession of cocaine, in violation of

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N.J.S.A. 24:21-19a(1), and that additionally, respondent violated but was not charged with possession of a counterfeit controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-19a(2).

A prehearing conference was held before Administrative Law Judge Richard L. Voliva, Jr. The prehearing order entered by Judge Voliva on January 10, 1985 defined the following issues to be addressed at the hearing with regard to the action to revoke respondent's casino hotel employee registration and casino employee license:

1. Did respondent violate section 86c(3) of the Casino Control Act (Act), pursuant to section 86g of the Act, due to his conduct on February 15, 1984, which constituted an alleged violation of N.J.S.A. 24:21-19a(2) (possession of a counterfeit controlled dangerous substance with intent to distribute).

2. Did respondent violate section 86c(4) of the Act, pursuant to section 86g, on the grounds that his conduct on February 15, 1984, constituted violations of N.J.S.A. 24:21-19a(2) (possession of a counterfeit controlled dangerous substance with intent to distribute); N.J.S.A. 24:21-20a(4) (possession of marijuana); and N.J.S.A. 24:21-47 (possession of drug paraphernalia).

3. Whether respondent lacks the requisite degree of good character, honesty and integrity required for licensure pursuant to section 89b(2) as a result of the misconduct alleged in the Division's complaint.

4. Whether respondent committed a statutory disqualifying offense pursuant to section 86c of the Act, in which case, respondent shall have the opportunity to affirmatively demonstrate his rehabilitation pursuant to sections 90h and 91d of the Act.

A hearing was held on January 21, 1985 in Hammonton, New Jersey. It should be noted that a lengthy discussion took place on the record at the hearing, prior to the presentation of proofs, as to respondent's right to be represented by legal counsel and to

have an interpreter assist him if he felt such assistance was necessary. Respondent voluntarily and knowingly waived his right to have legal counsel represent him at the hearing and to seek the assistance of an interpreter.

FACTUAL FINDINGS

Respondent is a 29 year old resident of Atlantic City, New Jersey. He has resided in the United States for approximately 14 years, having previously resided in Puerto Rico. He attended Atlantic City High School, but did not quite complete the 11th grade.

Respondent holds a casino hotel employee registration and a casino employee license. During 1978 and for the first half of 1979, he was employed by Zaberer's Restaurant as a dishwasher. On June 1, 1979, he commenced working at Resorts International Hotel Casino (Resorts) in the oyster bar as a bus boy. After approximately one year in that position, he was transferred to a job as a receiving clerk (at Resorts), a position he has held continuously since 1979. In his position as a receiving clerk, respondent is responsible for handling all of the liquor deliveries which arrive at Resorts from various vendors. Respondent brings the liquor items to the liquor room, stocks the shelves, and completes the orders which come in from the various bars and restaurants located at Resorts. Respondent physically handles the liquor deliveries which involve as much as 700 to 800 cases a day, and substantially more during the summer months.

On February 12, 1984, at approximately 10:00 a.m. respondent loaned his car to Carlos Herrera. Respondent had loaned his automobile to Herrera (who he knew through his employment at Resorts) on two other occasions (once for a date and another time to go shopping). On both occasions, Mr. Herrera returned the car when he said he would. Herrera told respondent on February 12, 1984, that he wanted to borrow respondent's automobile to drive to the Bronx, to visit his father who had just had a heart attack. Herrera stated that he would return the automobile on the same day. When Herrera failed to return the automobile for several days, respondent who had not heard from Herrera, became quite concerned. On February 15, 1984, respondent took a day off from work and asked his brother to drive him to the Bronx to find Herrera and his automobile. Respondent had tracked down Herrera's father's address through Herrera's aunt who resides on Montpelier Avenue in Atlantic City.

Respondent and his brother drove to New York (taking approximately four hours to get there because they became lost), and located Herrera's father's residence where respondent observed his automobile parked. Respondent entered the premises and saw Herrera's father who appeared to be quite ill. Respondent stayed for dinner with Herrera and his family. After dinner, respondent and Herrera proceeded to head back to Atlantic City in respondent's automobile. As respondent drove out of New York into New Jersey, he became lost. Upon seeing a New Jersey State Trooper giving another driver a ticket, respondent decided to ask the trooper for directions. The weather conditions were rainy, cold and foggy. He parked the car in a traffic lane and the state trooper told him to move his vehicle to a less hazardous position. The state trooper then requested to see respondent's license and registration. Respondent noted that Herrera became upset when he stopped to ask the trooper for directions to Atlantic City. The trooper told respondent to get out of the car, at which point in time the trooper noticed some articles on the rear seat of the automobile. He searched the car and discovered 95 clear plastic bags (which the trooper identified as the kind of bags normally utilized to package controlled dangerous substances), a bottle marked "procaine," a plastic bottle containing one pound of a white powder substance which the trooper suspected to be cocaine, and a large brown envelope containing a green vegetation which he suspected was marijuana. The trooper also found a plastic straw with the end cut at an angle which had a white powdery substance on it. These articles were found on the rear seat of the automobile (wrapped in Mr. Herrera's clothing), under the passenger seat and on the floor of the automobile in front of the passenger seat. Respondent alleges that when the trooper found the "procaine" on the back seat of the automobile, he became aggressive and struck respondent twice. The trooper asked respondent where he was hiding cocaine, and respondent became scared and said he had nothing to hide, and that he had simply loaned his automobile to Herrera. Respondent's testimony that he did not know that there were any illegal drugs or drug paraphernalia in his automobile was not only credible, but undisputed by any live testimony. The white powdery substance suspected of being procaine and cocaine was ultimately determined to be lactose (P-1).

Respondent and Herrera were arrested and confined to the Bergen County Jail. At approximately 5:00 p.m the next afternoon, respondent's sister and a friend posted the $2,000 cash bail required for respondent's release. Respondent had been charged with violations of N.J.S.A. 24:21-20a(4), 24:21-47, 24:21-20a(1) (two counts of possession of cocaine and procaine), and 24:21-19a(1). Herrera failed to appear for trial on the above charges. On March 30, 1984, the Bergen County Prosecutor's Office dismissed all of the

indictable charges against respondent. The disorderly persons offenses of possession of marijuana under 25 grams and possession of drug paraphernalia were referred back to the municipal court for adjudication. On May 2, 1984 respondent on the advice of his attorney elected to forego a trial and accepted a conditional discharge pursuant to N.J.S.A. 24:21-27. Respondent satisfied the terms and conditions of the supervisory treatment required by the conditional discharge, and on November 28, 1984, the complaint for possession of marijuana under 25 grams was dismissed (R-1). No documentation was introduced to indicate the exact disposition of the charge of a violation of N.J.S.A. 24:21-47. However, I have accepted the oral representation made by the Division at the hearing (which was not disputed by respondent) that the possession of drug paraphernalia was also disposed of through the conditional discharge.

John Domenic Valeria is the liquor room manager at Resorts and is respondent's supervisor. Mr. Valeria has been employed by Resorts since 1978, initially as the head of cashiers. He was then transferred to the position of assistant food and beverage manager which made him responsible for the china, glass and silver inventory, including determining that no thievery of these items was occurring. In 1980, when Resorts experienced a liquor inventory shortage, Mr. Valeria was assigned to determine whether the shortage was due to theft or whether there was an appearance of a shortage due to a problem with paperwork. He then took over the position of liquor room manager. He has known respondent for approximately four or five years, and personally chose respondent to work for him. Mr. Valeria stated that while the annual liquor sales at Resorts totals approximately $13,000,000 per year, the liquor shortages are less than $300 per year. He described respondent as a responsible employee. Mr. Valeria noted that he has never seen respondent smoke any cigarettes or use any drugs. Mr. Valeria has had limited social contact with respondent, having attended a few boxing matches with him. Mr. Valeria became aware of the criminal charges filed against respondent the day after he was arrested.

Respondent introduced into evidence five recommendation letters (R-2, R-3, R-4, R-5 and R-6). Benjamin M. Williams's letter corroborates the testimony of Mr. Valeria that respondent is a very capable employee (R-2). Luis and Maria Garcia's letter also corroborated that respondent is hardworking (R-3). Respondent testified that Mr. and Mrs. Garcia (Mr. Garcia is respondent's brother-in-law) were aware of the criminal charges which were filed against him. Hector R. Arce is an employee of Resorts

(chef assistant) and has known respondent for 14 years. Mr. Arce posted half of respondent's bail when he was arrested because he believed that respondent was innocent (R-4). Kathleen Garcia is employed by the Atlantic City Welfare Department, and has known respondent for 10 years and is not aware of respondent using drugs (R-5). Virgen and Jose Ruiz have known respondent for 12 years and have found him to be honest (R-6).

DISCUSSION AND CONCLUSIONS OF LAW

During closing argument, the Division acknowledged that respondent testified "very credibly" and that respondent's story was "well-conceived and almost believable". However, the Division fosters the argument that the indictable charges against respondent were dismissed not as a result of his innocence, but because the substance believed to have been cocaine, was actually lactose. The Division queries why respondent would have accepted a conditional discharge if he was truly innocent of the disorderly person's offenses.

Respondent argues that he opted to accept a conditional discharge rather than go through a hearing, based upon the advice of his lawyer and also taking into account the fact that Herrera did not show up for trial. Respondent apparently had been advised by his attorney, that a conditional discharge would not affect his casino employment. Respondent denies that he is guilty of any of the offenses alleged by the Division in its complaint.

Section 86g of the Casino Control Act provides that a license (or registration) may be denied to an individual who has committed any act or acts which would constitute any offense pursuant to N.J.S.A. 5:12-86c even if such conduct has not or may not be prosecuted under the criminal laws of the state of New Jersey. The burden of proof to demonstrate the commission of such acts is upon the Division by the preponderance of the evidence. In the present case, the Division alleges that respondent not only committed the acts for which he was charged on February 15, 1984, but that in addition, he also committed the offense of possession of a counterfeit controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(2). Respondent was not prosecuted for any of these alleged acts. In determining by a preponderance of the evidence whether respondent committed any of the acts for which the Division alleges he should be

disqualified pursuant to section 86g, it is necessary to comment upon respondent's credibility. Having had the opportunity to observe him at close range while testifying and to observe his responses on cross-examination, I note that respondent testified with consistency and self-confidence in a manner which can only be described as very credible. Additionally, I find it difficult to fathom that had respondent known that the alleged controlled dangerous substances and drug paraphernalia were in his automobile, that he would have stopped a state trooper to ask for directions to Atlantic City. I have also accepted as fact the contents of the New Jersey State Police investigation report (P-3) which was not disputed by respondent. It is important to emphasize that the investigation report states that the alleged controlled dangerous substance (CDS) and drug paraphernalia were found inside respondent's automobile, and not on his person. The testimony was undisputed that respondent had loaned his automobile to Herrera and there is nothing in the State Police report to suggest that respondent knew that the CDS or paraphernalia were in his automobile. The investigation report simply notes the presence of the CDS and paraphernalia in respondent's automobile, without in any way suggesting whether respondent or Herrera were responsible for the items being present in the automobile. The mere fact that these items were found in respondent's automobile which had been under the apparent control of another individual for several days, does not lead to the conclusion even by the preponderance of the evidence that respondent was guilty of the criminal offenses alleged by the Division. There was no testimony presented to link the presence of the drugs and paraphernalia specifically to respondent. That factor when coupled with the extremely credible nature of respondent's testimony, leads to the comfortable conclusion that respondent did not violate N.J.S.A. 24:21-19a(2), 24:21-19a(1), 24:21-20a(1), 24:21-20a(4), and 24:21-47. Having concluded that respondent has not been convicted nor has he committed, a statutory disqualifying offense pursuant to section 86c of the Act, rehabilitation need not be addressed. I further conclude that the above analysis supports a finding that respondent has not committed any offenses which are inimical pursuant to section 86c(4) of the Act.

I note that I am unwilling to accept the Division's argument that the fact that respondent elected to accept a conditional discharge leads to the inference that he was guilty of the disorderly persons offenses. A conditional discharge is not necessarily evidence of guilt, absent a plea of guilty or finding of guilt pursuant to N.J.S.A. 24:21-27a(2). There was no evidence presented that respondent's conditional discharge resulted after the entry of a guilty plea or finding of guilt. To the contrary, respondent

stated that he did not testify at the hearing for the drug charges, but rather, based upon the practical advice of his attorney, he accepted a conditional discharge, apparently without the necessity of entering a guilty plea.

Finally, the Division has raised the issue of respondent's good character, honesty and integrity, pursuant to section 89b(2) of the Casino Control Act, based upon his purported criminal violations, as it relates to his licensure. Having concluded that respondent did not commit the violations alleged by the Division, it would appear that it may be unnecessary to address the issue of good character, honesty and integrity. However, merely being arrested and charged with serious drug offenses, may tend to at least superficially tarnish a licensee's reputation for good character, honesty and integrity. Hence, I have evaluated the evidence presented by the respondent, and I **CONCLUDE** that he has affirmatively demonstrated by clear and convincing evidence his reputation for good character, honesty and integrity. This conclusion is based upon the testimony of Mr. Valeria which was corroborated by respondent's character reference letters which were introduced into evidence.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the Division's complaint is hereby **DISMISSED.** Respondent shall retain his casino employee license and casino hotel employee registration.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 7, 1985
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

March 8, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 12 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Complaint In the Matter of the State of New Jersey v. Ilumunado Matos, dated February 18, 1984

P-2 Complaint In the Matter of the State of New Jersey v. Iluminado Matos, dated February 15, 1984

P-3 New Jersey State Police Investigation Report, dated February 15, 1984 (2 pages)

P-4 Division of Gaming Enforcement, Supplementary Summary Report, dated July 16, 1984 (2 pages)

R-1 Dismissal of complaint No. SF 40459 In the Matter of the State of New Jersey v. Iluminado Matos, dated November 28, 1984

R-2 Reference letter prepared by Benjamin M. Williams, dated January 8, 1984

R-3 Reference letter prepared by Luis and Maria Garcia, dated January 18, 1985

R-4 Reference letter prepared by Hector R. Arce, (undated)

R-5 Reference letter prepared by Kathleen Garcia (undated)

R-6 Reference letter prepared by Virgen and Jose M. Ruiz, dated January 20, 1985

LIST OF WITNESSES

For petitioner:

None

For respondent:

Iluminado Santiago
John Domenic Valeria

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-257
OAL DOCKET NO. CCC 636-85
LICENSE NO. 24617-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
ZACKARY D. SAUNDERS,	:
Respondent.	:

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision of the Office of Administrative Law which incorporates a stipulation of settlement resolving the complaint by the Division of Gaming Enforcement against Zackary D. Saunders for a violation of N.J.S.A. 5:12-100(n); and the Commission having considered the entire record of these proceedings at its public meeting of November 20, 1985,

IT IS on this 23rd day of December 1985, ORDERED that the initial decision of the Office of Administrative Law is affirmed and adopted; and

IT IS FURTHER ORDERED that Zackary D. Saunders pay a civil penalty in the amount of $175, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Zackary D. Saunders's casino employee license is suspended for five days, with five-days credit given for the suspension previously imposed by the Sands Hotel and Casino;

IT IS FURTHER ORDERED that copies of this final order be served upon Zackary D. Saunders, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

WCRB... Oct 15 ... '85

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 636-85

AGENCY DKT. NO. 83-257

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ZACKARY D. SAUNDERS,

Respondent.

APPEARANCES:

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Zackary D. Saunders, pro se

Record Closed: August 6, 1984 Decided: October 11, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on August 2, 1983, seeking judgment revoking the respondent's casino employee license, or some other sanction, pursuant to sections 100n and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's alleged gaming at a licensed casino.

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PROCEDURAL HISTORY

By letter to the Casino Control Commission, dated January 5, 1985, the respondent requested a hearing on the complaint of the Division of Gaming Enforcement. On February 4, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in this matter on March 13, 1985. At that time, the parties engaged in discussion concerning the possibility of a settlement disposition of this matter. It was determined that a mutually satisfactory resolution of the matters in controversy was possible, and the parties reached agreement on and consented to a settlement disposition. The terms of settlement were expressly stated on the record and the respondent stated under oath that he fully understood and voluntarily consented to all of the terms and conditions of this settlement.

FINDINGS OF FACT

I have reviewed the entire record and the terms of settlement and I **FIND:**

1. The terms of settlement in this matter have been set forth in an unexecuted Stipulation of Settlement which is attached to this initial decision and which is incorporated herein as if set forth at length.

2. The parties to this action have voluntarily agreed to the terms of settlement, which were accepted on the record by the respondent after being placed under oath. The respondent has provided no explanation for his failure to sign the Stipulation, which was filed on October 1, 1985.

3. The settlement fully disposes of all issues in controversy and is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.A.C. 1:1-17.1, the parties to a contested case may settle a matter by consent and may express the settlement terms on the record. When the

administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an initial decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached unexecuted Stipulation of Settlement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have expressly accepted the settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the settlement terms and that these proceedings before the Office of Administrative Law be and are hereby **CONCLUDED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 11, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

10-15-85
DATE

Ruth Stark
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 17 1985
DATE

Ronald L. Parker/rs
OFFICE OF ADMINISTRATIVE LAW

bc

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DOCUMENTS IN EVIDENCE

None

WITNESSES

None

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: William E. Mountford, Jr.
Deputy Attorney General
(609) 292-0941

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-257

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Plaintiff,

vs.

ZACHARY D. SAUNDERS,

Respondent.

STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by William E. Mountford, Jr., Deputy Attorney General, and Zachary D. Saunders, pro se, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1) WHEREAS Respondent presently holds casino employee license #24617-21 issued by the Casino Control Commission on May 13, 1981.

2) WHEREAS on or about July 19, 1983, Respondent, Zachary D. Saunders, was observed gaming at craps in the Playboy Hotel/Casino, in violation of N.J.S.A. 5:12-100n.

3) WHEREAS on or about July 19, 1983, Respondent, Zachary D. Saunders, was employed by the Sands Hotel/Casino as a dealer.

4) WHEREAS Respondent, Zachary D. Saunders, is presently employed by the Harrah's Marina Hotel/Casino as a craps dealer.

5) WHEREAS on or about July 19, 1983, Respondent, Zachary D. Saunders, was suspended by the Sands Hotel/Casino for 15 working days in regards to the gaming violation, supra.

6) Attached hereto and made a part hereof is an investigative report dated August 4, 1983, by an agent of the Division of Gaming Enforcement relating to the events which occurred on or about August 4, 1983.

7) Attached hereto and made a part hereof is an investigative report dated July 18, 1983, by an agent of the Casino Control Commission relating to the events which occurred on or about July 18, 1983.

8) WHEREAS it is admitted that the aforementioned conduct as described in paragraphs 2, 3, 4, 5, 6 and 7 supra, did, in fact, occur.

9) WHEREAS the parties recognize the need to comply with the Casino Control Act and the regulations promulgated therefrom, and Respondent has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between the parties hereto that:

A. Respondent agrees to pay to the Casino Control Commission a civil penalty of $175.00.

B. The license credentials of the Respondent shall be suspended for 5 working days without pay all five (5) of which will be credited to the suspension already served.

The undersigned consent to the form and entry of the above Stipulation of Settlement.

William E. Mountford Jr.

William E. Mountford, Jr.
Deputy Attorney General
Attorney for Plaintiff

Zachary D. Saunders, Respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-41
LICENSE NO. 43843-21
REGISTRATION NO. 35009-40
OAL DOCKET NO. CCC 1417-85

STATE OF NEW JERSEY, DEPARTMENT
OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

GLENN SCALIA,

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 18, 1985,

IT IS on this 4th day of OCTOBER 1985, ORDERED that the initial decision is affirmed substantially for the reasons contained in the initial decision which is incorporated herein by reference and made a part herof; and

IT IS FURTHER ORDERED that the amended complaint of the Division of Gaming Enforcement for revocation of the casino employee license and casino hotel employee registration of Glenn Scalia be dismissed; and

IT IS FURTHER ORDERED that copies of the final order be served upon Glenn Scalia, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1417-85
AGENCY DKT. NO. 85-41

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
GLENN F. SCALIA,
Respondent.

William E. Mountford, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Marc Friedman, Esq., for the respondent (John H. Rosenberger, attorney)

Record Closed: June 25, 1985 Decided: August 9, 1985

BEFORE **BEATRICE S. TYLUTKI, ALJ:**

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on February 8, 1985, as amended on May 3, 1985, seeking the revocation of the respondent's license as a casino employee (craps dealer) as well as his registration as a casino hotel employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

Mr. Scalia requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference held on April 23, 1985, the Division was represented by Glenn Stanton, appearing pursuant to R. 1:21-3, and at that time the parties agreed that the issues in this matter are:

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(a) Whether the respondent's alleged criminal activities would render his continued licensure and/or registration inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).

(b) Whether the respondent is disqualified from licensure and/or registration based on certain criminal activities pursuant to N.J.S.A. 5:12-86g.

(c) Whether the respondent can establish his reputation for good character, honesty and integrity as required for licensure as a casino employee pursuant to N.J.S.A. 5:12-90b.

(d) Whether the respondent can establish that he has been rehabilitated pursuant to the provisions of N.J.S.A. 5:12-90h and/or 5:12-91d.

The hearing was held on June 25, 1985, and at that time the Division was represented by Deputy Attorney General William E. Mountford. At the start of the hearing, Mr. Mountford indicated that the Division was no longer recommending the revocation of the respondent's registration as a casino hotel employee and, therefore, the issues in this matter relate only to the revocation of the respondent's license as a casino employee (craps dealer).

I FIND that the facts in this matter are not in issue.

Mr. Scalia completed the 12-week course to become a craps dealer and received the appropriate license from the Commission. He worked for the Playboy Casino Hotel (now known as the Atlantis Hotel and Casino) as a craps dealer from 1982 until July 12, 1984, when he resigned in lieu of being fired by the casino because criminal charges were pending against him (R-2). While employed by the casino, Mr. Scalia had a good employment record (R-2, R-3). Since his resignation, Mr. Scalia has tried, without success, to get another position with the casino industry. The respondent is currently unemployed.

While employed as a craps dealer, Mr. Scalia was arrested for shoplifting, a violation of N.J.S.A. 2C:20-11, at the Bamberger's department store in Deptford, New Jersey, on December 14, 1983 (P-1). Mr. Scalia was given the opportunity to attend an anti-shoplifting course in lieu of a monetary fine. After he successfully completed the course, the fine was dismissed (R-4).

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On his own behalf, Mr. Scalia stated that at the time of the incident he had been visiting his parents in Runnemede and that he and his brother, Larry, had gone to a tavern in Deptford where he consumed a substantial amount of alcoholic beverages. The respondent then decided to go to Bamberger's department store to buy some tapes and his brother accompanied him. While they were at the store, Mr. Larry Scalia put on a jacket and left the store without paying for it. Mr. Larry Scalia put the jacket in the car, came back into the store and took another jacket. Mr. Larry Scalia repeated the procedure two more times. The respondent was aware of what his brother was doing and did not try to stop him. Since it appeared to be easy, the respondent decided to try it. The respondent took a coat and tie and was arrested as he was leaving the store (P-1). The value of the items the respondent had taken totaled $79 (P-1). The respondent said he was ashamed of his actions and that although he does not blame his brother, he feels it would not have happened if his brother had not been there. At the time of his arrest, the respondent told the police officer that he was employed by a casino and that he had a registered firearm (P-1). There is no indication that either his employer or the Division was aware of this shoplifting conviction at the time it occurred.

Several months thereafter, on July 5, 1984, the respondent was arrested by Officer Michael A. Edge of the Margate Police Department for the possession of a handgun without a permit and for the possession of a gun for unlawful purposes.

Officer Edge testified that while on patrol with Officer Wolfson on July 5, 1984, he responded to a disturbance call assigned to him by the police dispatcher at approximately 4:30 p.m. When Officer Edge arrived at the location identified by the caller, he found a number of people standing in front of a liquor store and one person, Stephen Civitarese, appeared to be very upset. Officer Edge spoke to Mr. Civitarese, who indicated that two men had tried to involve him in an altercation and that one man had gone to a car and had broken off the antenna; however, no fight occurred. Mr. Civitarese claimed that the man with the antenna ran down the street while the other man went into the liquor store.

Because he had arrested him on several occasions for fighting, Officer Edge knew Mr. Civitarese and he considered him to be a troublemaker. Officer Edge questioned the other people standing near the liquor store, who verified Mr. Civitarese's story.

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While the officer was talking to these people, Mr. Civitarese pointed to two men, approximately a block away, and said that one of them was the person who had run away and that the other man had a gun. The two officers drove to where the two men, the respondent and Jackie Jacobs, were standing. The officers searched them and found an unloaded pistol and two bullets in the possession of the respondent. The respondent was not one of the men allegedly involved in the incident with Mr. Civitarese.

Officer Edge placed the respondent under arrest and the respondent told the officer that his brother had called him and said he was in trouble with Mr. Civitarese. The respondent was concerned since his brother was recuperating from stab wounds received during a prior fight. The respondent told the police officer that he took his pistol in order to frighten Mr. Civitarese and that he was not thinking clearly at the time.

On his own behalf, Mr. Scalia stated that his brother, Gregory, was badly wounded in a fight. On the day in question, at approximately 3:00 p.m., Gregory went with the respondent to the dentist, at approximately 3:00 p.m. where the respondent had a tooth pulled. Gregory drove the respondent home since he had received medication while at the dentist. After they returned to the respondent's residency, Gregory and Jackie Jacobs went for a walk. At about four o'clock, the respondent received the call from his brother stating that he was involved in a fight. The respondent took the pistol from under his bed where he kept it, unloaded it and went out to help his brother. The respondent stated that he has a permit to own the pistol; however, he did not have a permit to carry a weapon.

According to Mr. Scalia, he was not thinking clearly at the time because of the medication he had taken, and he planned to use the gun to scare the person attacking his brother. After he left his residency, Mr. Scalia saw Mr. Jacobs, who assured him that everything was all right. As they were walking back to the respondent's residency, they were stopped by the police officers, who arrested the respondent.

In an affidavit, the fact that the respondent responded to a call from his brother and that he unloaded his gun before he left his residency was confirmed by the respondent's present wife (R-5).

Also in an affidavit, Lynn B. Fader, D.D.S., confirmed that Mr. Scalia had had a wisdom tooth removed on July 5, 1984, at about 3 p.m., that he had been given valium

and a barbituate as an anesthetic, and that this medication can cause a patient to become slightly incoherent and lightheaded, and can impair a person's judgment (R-5).

After his arrest, the respondent waived indictment and trial by jury, and an accusation was issued against him for the possession of a handgun without a permit, a violation of N.J.S.A. 2:39-5(b). On December 7, 1984, the respondent pled guilty to this offense and was sentenced to probation for one year, was fined $275, was required to pay a court cost of $25 and was required to perform 75 hours of community service (J-1).

At the time of the hearing, Mr. Scalia was still on probation, was regularly paying the fine in installment payments of $27.50 a month and had completed the 75 hours of community service by working for the Atlantic County Supported Work Program (J-1, R-6). By letter dated May 2, 1985, the respondent's probation officer indicated that Mr. Scalia was in the process of successfully completing his probation period (J-1).

The respondent stated that except for the two incidents mentioned herein, he has never been arrested. At the time of the hearing, the respondent was 23 years old, was married and has a young daughter. The respondent's wife is employed as a hostess in a casino and she now suppports the family.

The respondent stated that his two brothers, Larry and Gregory, both have drug-related problems and are frequently unemployed. These two brothers reside with the respondent's parents in Runnemede and since the two incidents in issue, the respondent no longer allows either of his brothers to visit him in Atlantic City and he only sees them infrequently when he visits his parents.

Mr. Scalia said that the shoplifting incident was a stupid mistake, and that he was not thinking clearly because of the medication at the time of the gun possession offense. Mr. Scalia felt that he had been punished sufficiently for these offenses by the court-imposed sanctions as well as by the fact that he has been unemployed for a year.

Mr. Friedman argued that the respondent's license should not be revoked because of the two incidents. Mr. Friedman stated that the shoplifting offense was a stupid error, and as to the gun possession offense, Mr. Friedman argued that the respondent reacted to what he considered to be a dangerous situation for his brother and

that his judgment was clouded by the medication. He noted that the respondent had the sense to remove the bullets and that he was not involved in any incident. Mr. Friedman argued that the two incidents were isolated offenses and that there is no reason to believe that there will be a repeat of any criminal action. Also, Mr. Friedman noted that the respondent no longer associates with his brothers. He further pointed out that the two incidents were the result of the respondent's reaction to his brothers' activities and argued that the respondent has made a good faith effort to rehabilitate himself after the two incidents.

In closing, Mr. Mountford stated that although neither of the two offenses was a statutory disqualify pursuant to N.J.S.A. 5:12-86c or 5:12-86g, the respondent has not shown that he is a person of good character, honesty and integrity as required by N.J.S.A. 5:12-90b. Mr. Mountford argued that the shoplifting offense alone would not be sufficient to revoke his license, but that this incident taken together with the more serious gun possession offense, raises a substantial question regarding the respondent's fitness for licensure. Mr. Mountford noted that Mr. Scalia was employed as a craps dealer, a position which carries with it the responsibility for a substantial amount of money. He also noted that the Commission expects dealers to meet a high standard of reliability.

In rebuttal, Mr. Friedman argued that the gun possession incident was an impulsive reaction which is not enough to impune the respondent's good character, honesty and integrity.

Based on my review of the testimony and exhibits, I **CONCLUDE** that the Division has not shown a statutory disqualifier pursuant to either N.J.S.A. 5:12-86c or 5:12-86g or that the continuation of the respondent's licensure would be inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4).

Further, I **CONCLUDE** that Mr. Scalia has established the necessary reputation for good character, honesty and integrity needed for the continuation of his licensure as a casino employee, pursuant to N.J.S.A. 5:12-89b. In reaching this conclusion, I have accepted the respondent's explanation that he would not have committed the shoplifting offense except for the example set by his brother and the fact that he was under the influence of alcohol. Further, I recognize that there were mitigating circumstances relating to the gun possession offense and that Mr. Scalia has shown a genuine intent to be law-abiding as demonstrated by his avoiding contact with his brothers who have contributed to his problems in the past.

Lastly, I **ORDER** that this matter be **DISMISSED** and that the license of Glenn F. Scalia as a casino employee not be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 9, 1985
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

August 9, 1985
DATE

Bernadette P. Fauza
CASINO CONTROL COMMISSION

Mailed to Parties:

August 13, 1985
DATE

Ronald J. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBITS ADMITTED INTO EVIDENCE:

JOINT EXHIBITS:

J-1 Letter from Charles Morvay and Anthony Lisi to Marc Friedman, dated May 2, 1985

FOR THE PETITIONER:

P-1 Deptford Township Police Department Uniform Arrest Report regarding Glenn Scalia, dated December 14, 1983; Deptford Township Police Department Investigation Report regarding a shoplifting incident, dated December 14, 1983; and Complaint filed against Glenn Scalia by Robert Nelson, Security Representative for Bamberger's department store, dated December 14, 1984, which indicates the results of the court action in the matter.

P-2 Waiver of Indictment and Trial by Jury and the Accusation filed against Glenn Scalia

FOR THE RESPONDENT:

R-1 Marked for identification only

R-2 Personnel Record regarding the employment of Glenn Scalia by the Playboy Hotel and Casino (now known as Atlantis Casino Hotel)

R-3 Letter from Robert G. Yee, Casino Manager of Atlantis Casino Hotel, to Marc Friedman, dated April 9, 1985

R-4 Letter from Robert B. Kafka, Senior Probation Officer, to the Honorable Anne McDonnell, dated April 18, 1984

R-5 Affidavit of Lynn Fader, D.D.S., and attached anesthesia and dental records, and the affidavit of Patricia Santora

R-6 Letter from Gene B. Solomon, Job Developer, Atlantic City Division of Training and Employment, Supportive Work Program, to Anthony Lisi, dated February 5, 1985, with attached community service timesheet for Glenn Scalia

WITNESSES

FOR THE PETITIONER:

Officer Michael A. Edge

FOR THE RESPONDENT:

Glenn F. Scalia

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-91(b)
LICENSE NO. 29386-21
OAL DOCKET NO. CCC 2058-85

STATE OF NEW JERSEY, DEPARTMENT
OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

KERRY L. SMALL,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) regarding this and the consolidated case, State v. Vicki L. Small, Docket No. 85-91(a), having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of September 18, 1985,

IT IS on this 21st day of OCTOBER 1985, ORDERED that the portion of the initial decision regarding Kerry L. Small is modified as follows:

(1) Possession of a controlled dangerous substance with intent to distribute is an automatic disqualifying offense under N.J.S.A. 5:12-86(c)(3) and (g). The conclusion of the ALJ that the respondent

is disqualified from licensure for committing an inimical offense under N.J.S.A. 5:12-86(c)(4) and (g) is rejected as incorrect. The respondent is disqualified from licensure pursuant to N.J.S.A. 5:12-86(c)(3) and (g).

(2) Although rehabilitation was included as an issue in the prehearing order, the ALJ failed to address it. Upon consideration of all the evidence, the Commission finds the respondent failed to demonstrate rehabilitation by clear and convincing evidence pursuant to N.J.S.A. 5:12-90(h).

(3) Although good character, honesty and integrity was included as an issue in the prehearing order, the ALJ failed to address it. Upon consideration of all the evidence, the Commission finds that the respondent failed to demonstrate by clear and convincing evidence that he possesses the good character, honesty and integrity required of a casino employee licensee pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b).

IT IS FURTHER ORDERED that the casino employee license of Kerry L. Small is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Kerry L. Small is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Kerry L. Small, the Division of Gaming

Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-91(a)
LICENSE NO. 47214-21
OAL DOCKET NO. CCC 2339-85

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

VICKI L. SMALL,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 18, 1985,

IT IS on this 17th day of OCTOBER 1985, ORDERED that the portion of the initial decision regarding Vicki L. Small is affirmed substantially for the reasons contained in the initial decision which is incorporated herein by reference and made a part herof; and

IT IS FURTHER ORDERED that the portion of the complaint of the Division of Gaming Enforcement seeking revocation of the casino employee license of Vicki L. Small be dismissed; and

IT IS FURTHER ORDERED that copies of the final order be served upon Vicki L. Small, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 2058-85
and CCC 2339-85
AGENCY DKT. NOS. 85-91b
and 85-91a
(Consolidated)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
KERRY L. SMALL and
VICKI L. SMALL,
Respondents.

William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Mark Roddy, Esq., for respondent Kerry L. Small (Goldenberg, Mackler & Sayegh, attorneys)

Jerry C. Goldhagen, Esq., for respondent Vicki L. Small

Record Closed: July 23, 1985 Decided: August 12, 1985

BEFORE **EDGAR R. HOLMES**, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on March 6, 1985, against Kerry L. Small, OAL DKT. CCC 2085-85) seeking to revoke his casino employee's license because he was involved in a drug offense. The matter was pretried on May 24, 1985, and set down for plenary hearing on July 23,

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1985 in Atlantic City. A similar complaint was filed against Vicki Small on March 6, 1985, (OAL DKT. CCC 2339-85). That matter was pretried on June 10, 1985. Vicki Small is the spouse of Kerry Small. The matters were consolidated because they arose out of the same search and seizure. They were tried to a conclusion on July 23, 1985, in Atlantic City.

At the hearing the parties stipulated to the following agreed FACTS:

1. All criminal charges were dismissed against Vicki L. Small.

2. Kerry L. Small pled guilty and was convicted of possession of cocaine and possession of methamphetamine to which he received a noncustodial sentence.

The Division of Gaming Enforcement proceeded on the theory that both respondents possessed cocaine and other controlled dangerous substances with the intent to distribute them.

Possession of cocaine and methamphetamine with the intent to distribute them are high misdemeanors in the state of New Jersey and are classified in N.J.S.A. 5:12-86c(3) as disqualification criteria for continued licensure. The Division may proceed to prove the elements of any crime not prosecuted under the criminal laws of this state pursuant to N.J.S.A. 5:12-86g.

Based on the testimony of David Hann, narcotics investigator with the Atlantic City Prosecutor's Office, and documents in evidence, I **FIND** these additional facts:

On August 17, 1984, pursuant to a search warrant, a raid was conducted on the premises of Kerry and Vicki Small. The Smalls were in bed for the night. When they were confronted by the police in their bedroom, the Smalls admitted possession. The subsequent search revealed cocaine with a net weight of eighteen grams, a trace of methamphetamine and eight Diazepam pills. The cocaine was wrapped in Kerry Small's

shirt inside his dresser drawer. Additionally, in another room the search revealed a pocket scale and a triple beam balance scale, which the narcotics officer identified as scales commonly used to measure drugs. The raiding party also found other evidence that the narcotics officer described as drug paraphenalia, to wit: a bong and marijuana pipe with residue of marijuana, a cocaine consumer's handbook, some price quotes on drugs for amounts ranging from one-eighth ounce to a kilo, a board with residue and razor blade for cutting cocaine. They also found three rolled up dollar bills and two glass straws commonly used for "snorting" cocaine. Finally, there was found in Kerry L. Small's coat pocket, which was hanging in the closet, a plastic bag containing Inositol, a substance commonly used to cut or dilute cocaine and other controlled dangerous substances.

Mr. Hann, who testified to the above, observed at the hearing, based on his presence at the search scene, that Vicki Small "must have been aware of what her husband was doing."

None of these facts is seriously in dispute. What is in dispute is whether this evidence is sufficient to establish by a preponderance of the evidence an intention to distribute cocaine.

I **CONCLUDE** that the evidence is insufficient to establish that Vicki Small possessed cocaine with the intent to distribute the same. For this conclusion I rely on the facts that show that the cocaine and Inositol were exclusively in the possession of Kerry Small together with the opinion of Investigator Hann that Vicki Small's involvement rose only to the level of awareness of what her husband was doing.

I further **CONCLUDE** that the balance of the drugs found at the scene were of insufficient quantities to establish an intent to distribute and are consistent with possession for personal use.

The issue to be resolved next is the intention of Kerry Small with regard to the cocaine which he admits possessing. Counsel argued that the evidence of personal use was overwhelming. He points to the residue on the cutting board, the snorters and the consumer's handbook as evidence that cocaine was consumed in the Small household. I am persuaded that the Smalls used cocaine. However, I also **CONCLUDE** that Kerry Small intended to distribute the cocaine found in his possession. The possession of scales and the evidence of price quotes are consistent with both possession and possession with

intent. What tips the balance in this case is the quantity of cocaine found, together with the possession of Inosital. The narcotics officer described Inositol as a cutting agent. This was not rebutted. I cannot take seriously counsel for Vicki Small's suggestion that the purpose of the cutting agent was to dilute the cocaine for personal consumption.

A variety of witnesses testified both in person and by affidavit to the good reputation and character of both Vicki and Kerry Small. Their supervisors at the casino characterized them as model employees. In addition, Kerry Small has a second career as a real estate agent and specializes in investment properties. He is highly successful and highly motivated. Kerry Small is apparently now drug free. Nevertheless, cocaine is recognized as the drug of choice among the middle class and upwardly mobile. Someone has to make it available. Kerry Small is such a one. Drug dealers are a blight on the community. For this reason, I **CONCLUDE** that his employment in a casino would be inimical to the policies of the Casino Control Act and casino operations.

I **ORDER** that the complaint against Vicki L. Small be **DISMISSED** with prejudice.

I **ORDER** that the casino employee license of Kerry L. Small be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 12, 1985
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

August 13, 1985
DATE

Nancy O. Shiek
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

August 15, 1985
DATE

Ronald J. Parker, Jr. S.
OFFICE OF ADMINISTRATIVE LAW

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EXHIBIT LIST

P-5 (as to Vicki Small only) Lab Report
P-6 Indictment
P-7 Judgment of Conviction
P-8 LR28 (plea bargain agreements)

R-1 Letter, Alex Williams
R-2 Letter, Anthony Sporano
R-3 Letter, John Lundsford
R-4 Letter, Jim Bracey
R-5 Letter, Anthony Sporano
R-6 Roche Lab Report
R-7 Roche Lab Report
R-8 Roche Lab Report
R-9 Letter, Steven Catapano
R-10 Letter, Cornelia Bittle
R-11 Letter, Probation Officer
R-12 Letter, Robert Bernardo

R2-1 Letter, Pat O'Brien
R2-2 Letter, Catherine Toma
R2-3 Letter, Ramon Astillero
R2-4 Letter, Jane Blackton

OAL DKT. NOS. CCC 2058-85 & 2339-85

WITNESS LIST

For petitioner:

David Hann

For respondents:

Andrew Bittle
Dennis Bonica
Patricia O'Brien
Ellsworth R. Gaskill, Jr.
Catherine Toma
Laura Greenstein

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-87
OAL DOCKET NO. CCC 1710-85
LICENSE NO. 3896-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER OF REMAND
v.	:	
JOHN A. SPADAVECCHIA,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and an exception to the initial decision having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of August 14, 1985,

IT IS on this 17th day of October 1985, ORDERED that this matter is remanded to the OAL for further expansion of the record to allow thorough consideration of the issues raised in the prehearing order dated May 9, 1985. Without limiting the scope of the hearing on remand, the Commission desires to have the record expanded to include, if possible:

1. The testimony of John Rushinock, the respondent's supervisor at Trump Plaza Casino Hotel.

2. The testimony of John E. McLaughlin, the State Police investigator who prepared the investigative report in evidence as P-1.

3. The videotape of the incident alleged to have taken place on November 7, 1984.

IT IS FURTHER ORDERED that copies of this order of remand be served upon John A. Spadavecchia, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
JUL 10 1985
CASINO CONTROL COMMISSION
OAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 1710-85

AGENCY DKT. NO. 85-87

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,

Petitioner,

v.

JOHN A. SPADAVECCHIA,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

John A. Spadavecchia, pro se.

Record Closed: June 18, 1985 Decided: July 1, 1985

BEFORE **EDGAR R. HOLMES**, ALJ:

The Division of Gaming Enforcement filed a complaint on March 6, 1985, seeking sanctions against respondent's license for an alleged violation of N.J.S.A. 5:12-100o(1). The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a prehearing conference on May 8, 1985. The matter was heard on June 18, 1985, at the Office of Administrative Law in Trenton.

The precise issue to be determined was whether or not respondent accepted a tip or gratuity from a player or patron at the casino where he was employed as a floorperson on November 7, 1984, contrary to N.J.S.A. 5:12-100o(1).

Petitioner called no witnesses. The only evidence produced was P-1 which consists of a memorandum from John E. McLaughlin, agent, to Captain Frank Roller, CIB supervisor, dated November 16, 1984, a memorandum from DSG A.C. Gatto to Captain Roller dated November 20, 1984, and an Operations Report consisting of three pages prepared by Agent McLaughlin on November 8, 1984 and November 16, 1984. P-1 was admitted subject to the first two sentences of the last paragraph on page 2 of Agent McLaughlin's Operations Report being stricken.

Respondent elected not to testify and as a result the Division's evidence is unrebutted.

Based on P-1 in evidence I **FIND** the following **FACTS:**

1. On November 7, 1984, the respondent, John Spadavecchia License #3896-21 was a floorperson assigned to pit 6 at the Trump Plaza Casino.

2. On November 7, 1984, a Trump Plaza Casino surveillance crew observed and videotaped a patron and player, Sal Cash, remove his right hand from his pocket, cup his hand, place his hand in the right hand of respondent who then placed his right hand in his own right pocket.

3. Immediately upon making this observation respondent was escorted from the floor and asked to empty his right pocket.

4. Respondent's right pocket contained three things. One hundred and thirty-five dollars in various denominations folded in half, a one hundred dollar bill folded in quarters and a fifty dollar bill folded in quarters.

5. Sal Cash was interviewed. He stated he knew the respondent only in passing; he thought his name was John. He did not remember passing anything, he did not remember giving respondent a tip. This finding is limited to what Sal Cash said. I make no finding regarding the truthfulness of his statements here.

6. Respondent was interviewed. Prior to viewing the tape the respondent denied taking anything from anyone. Subsequent to viewing the tape the respondent denied taking anything "illegal." He explained that the money in his pocket was in three separate folds in case he was "mugged." This finding is limited to what respondent said. I make no finding regarding the truthfulness of his statements here.

7. Joseph Rushinock, Trump Plaza Casino games shift manager who was present during McLaughlin's interview with respondent was interviewed. He said that at one point during the interview, McLaughlin left the room for a period of time and the respondent told him that patron Cash gave him $150 in repayment of a loan but when McLaughlin returned to the interview room respondent continued to deny receiving anything from patron Cash.

DISCUSSION OF LAW

The statute in question, N.J.S.A. 5:12-100o(1) reads in it's entirety as follows:

> It shall be unlawful for any casino key employee or boxman, floorman, or any other casino employee who shall serve in a supervisory position to solicit or accept, and for any other casino employee to solicit, any tip or gratuity from any player or patron at the casino where he is employed.

The evidence adduced at the hearing and thus far found as FACT is in the nature of direct evidence because it was seen and heard. Evidence also includes facts that may be inferred, R 1(1).

Admissibility of evidence in contested cases arising in the Casino Control Commission is governed by N.J.S.A. 5:12-107a(6) and N.J.A.C. 19:42-2.1(d)1 and 2. Subject to relevancy and valid claims of privilege, evidence is admissible "and shall be sufficient in itself to support a finding. . . if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs." This standard differs from the Residuum Rule adopted in New Jersey for all other administrative hearings. N.J.A.C. 1:1-15.8.

Mindful of this standard I infer from the facts found thus far the following additional:

FINDINGS OF FACT

8. From fact 2 and fact 7, I infer that patron Sal Cash passed $150 to respondent. (Something passed according to the investigators viewing of the scene and the tapes. Respondent admitted to his supervisor that it was $150, although he characterized it as a loan repayment.)

9. From the fact that the money passed; from the fact that respondent denied that anything passed; from the fact that respondent subsequently said nothing "illegal" passed, from the fact that Sal Cash said he knew "John" only in passing; from the fact that Sal Cash could not "remember" passing a tip to respondent; I infer that the money passed was a tip or gratuity.

10. I infer that if the payment was legitimate, one or both parties to the transaction would have explained the transaction.

I **CONCLUDE** that respondent violated N.J.S.A. 5:12-100o(1) on November 7, 1984, by accepting a tip or gratuity from a patron or player of the casino in which respondent was employed as a floorperson.

I **CONCLUDE** that the commission of an act expressly declared unlawful by the Casino Control Act renders the continued licensure of the actor per se "inimical" to the policies of the Casino Control Act and to casino operations.

I therefore **ORDER** that respondent's license be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 1710-85

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE July 1 1985

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

DATE July 2, 1985

Paula Wurz
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE July 2, 1985

OFFICE OF ADMINISTRATIVE LAW

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WITNESSES

None

DOCUMENTS INTO EVIDENCE

P-1 Investigation Reports

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EL-3
OAL DOCKET NO. CCC 03401-84

STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT	:
Complainant,	:
v.	:
ALBERT SULLA,	:
Respondent.	:

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the filing of an initial decision by the Office of Administrative Law on November 19, 1984, recommending that the petition of the Division of Gaming Enforcement (DGE) for permanent placement of the name of Albert Sulla upon the exclusion list be dismissed and his name, which was preliminarily placed on the exclusion list by Commission order dated April 5, 1984, be removed therefrom; and the DGE having filed exceptions to the initial decision on December 7, 1984; and the Commission, after considering the entire record of these proceedings, having resolved at its public meeting of February 6, 1985, to modify the initial decision and to dismiss the petition for exclusion,

IT IS on this 13th day of December 1985, ordered that the initial decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

1. That portion of the initial decision concluding that no adverse inferences may be drawn from the respondent's exercise of the Fifth Amendment right to silence when there is a "reasonable apprehension of prosecution" (init. dec. at 12) is rejected. The Commission has previously ruled in In the Matter of the Exclusion of Lawrence Merlino and Philip Leonetti From Casino/Hotel Facilities, Docket Nos. 82-EL-19 and 20, (consolidated) (Commission decision May 25, 1984), that adverse inferences may be drawn as a result of the respondent's failure to respond to the evidence against him notwithstanding the fact that the respondent may invoke the Fifth Amendment right to silence, if such inferences are otherwise justified by the record.

   The Commission declines to draw any inference that the respondent left a weapon in room 401 of the Golden Nugget casino hotel on February 27, 1983, because there is insufficient evidence in the record to support such an inference.

2. The Administrative Law Judge "assumed arguendo" that N.J.S.A. 5:12-107(a)(6), rather than the "residuum rule" (N.J.A.C. 1:1-15.8) applied in this case. Consistent with the Commission's ruling in Merlino and Leonetti, supra, the Commission holds unequivocally that N.J.S.A. 5:12-107(a)(6) applies.

3. The finding that the respondent was arrested by the Philadelphia Police Department and charged with

establishing a gambling house, disorderly conduct and breach of peace on March 22, 1983, is rejected. The record reveals the arrest and charges occurred on August 22, 1963.

4. The finding that the disposition of the respondent's 1981 and 1982 arrests, i.e., dismissal of the charges, is "extremely significant" and that the respondent is entitled to rely upon the dismissals in the same manner that the DGE is entitled to rely upon the respondent's 1976 conviction on federal theft charges (init. dec. at 10) is rejected. The Commission attaches little or no significance to the dismissal of criminal charges based upon a successful motion to supress evidence and the Commonwealth of Pennsylvania's subsequent failure to prosecute the charges. The true significance of the dismissals was to place the burden of proving the charges by a preponderance of the credible evidence upon the DGE - a burden which it failed to carry.

5. The finding that the exclusion regulation "seems to require a nexus between the nature of the offense for which a person has been convicted and the interest of the State of New Jersey or licensed gaming" (init. dec. at 10-11), is rejected. The nexus concept, while relevant, is not essential to an inimical finding.

6. The finding that "the disposition of the federal charges is not inimical," (init. dec. at 10), is rejected. The circumstances surrounding the offense and subsequent acts determine whether the inimical standard is met or not. Upon review of the evidence in this record, the Commission

agrees that the offense in question is not one which renders the respondent's presence in a licensed casino inimical to the interest of the State or of licensed gaming therein within the meaning of N.J.A.C. 19:48-1.3(a)(2).

IT IS FURTHER ORDERED that the petition for the exclusion of Albert Sulla from casino hotel facilities is dismissed for the reasons set forth in the initial decision as modified and further for the reasons stated on the record at the Commission's meeting of February 6, 1985; and

IT IS FURTHER ORDERED that the preliminary order of exclusion dated April 5, 1984, be vacated and the respondent's name be removed from the exclusion list; and

IT IS FURTHER ORDERED that copies of this final order be served upon Albert Sulla, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

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NOV 20 1984
CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION
OAL DKT. NO. CCC 3401-84
AGENCY DKT. NO. 84-EL-3

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,
v.
ALBERT SULLA,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Harry Goldenberg, Esq., for the respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: October 2, 1984 Decided: NOVEMBER 16, 1984

BEFORE **VALERIE H. ARMSTRONG**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On January 27, 1984 the Division of Gaming Enforcement (Division) filed a petition to place respondent on the exclusion list, pursuant to N.J.S.A. 5:12-71 et seq. A preliminary order of exclusion was entered by the Casino Control Commission (Commission) on April 5, 1984, at a public meeting held on April 4, 1984, which was not attended by respondent. Respondent's name was placed on the exclusion list, pending a final hearing (if requested by respondent).

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By letter dated April 30, 1984, respondent's counsel requested a full evidentiary hearing. The matter was thereafter transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held resulting in a prehearing order entered on June 18, 1984, which defined the following issue to be addressed at the hearing:

> Whether respondent's conduct and criminal violations alleged in paragraphs 5 through 14 of petitioner's petition warrant respondent's exclusion from licensed casino establishments, pursuant to N.J.S.A. 5:12-71a(1),(2),(3) and N.J.A.C. 19:48-1.3(a)(1)(2),(3) and (4).

The hearing was held at the Brigantine City Hall, Brigantine, New Jersey, on September 6, 1984. The record remained open pending submission by the parties of additional documentary material and briefs. This administrative law judge received the documentary material on October 2, 1984 (R-1), resulting in the record being closed on that date. Both parties submitted post hearing briefs which have been considered in rendering this initial decision.

FACTUAL FINDINGS

The following facts are undisputed.

On March 22, 1983, respondent was arrested by the Philadelphia Police Department and charged with establishing a gambling house, disorderly conduct and breach of peace. The charges were discharged (P-1).

The Division's exclusionary petition stated in paragraph 6 that respondent ". . .was arrested [on June 9, 1964] by the Philadelphia Police Department and charged with a violation of the City Gambling Statute. Respondent was found guilty in municipal court and sentenced to 15 days in the House of Corrections." However, the Division subsequently ascertained that the June 1964 offense constituted a violation of Philadelphia City Ordinance 5-1301, a chapter of the Fire Code (Obstruction of Exits) which was a summary offense punishable by a fine of $25 to $300 or incarceration not to exceed 90 days, or both (P-7).

On April 23, 1976, respondent entered a plea of nolo contendere to a three count indictment in the United States District Court for the Eastern District of Pennsylvania to theft from interstate shipment, possession of goods stolen from interstate shipment, conspiracy, and aiding and abetting. Respondent received a suspended sentence, three years' probation and was ordered to make restitution in the amount of $6372.86 before the termination of probation (P-2).

On September 3, 1981, respondent was arrested as the result of a search warrant and charged with running an illegal lottery (P-3). A motion to suppress evidence was argued and granted (R-1, R-2). The charges were dismissed for lack of prosecution.

On October 20, 1982, respondent was arrested by the Philadelphia Police Department and charged with running an illegal lottery (P-4). The matter was listed for trial on March 17, 1983. The Commonwealth withdrew its case and the charges were dismissed for lack of prosecution (R-1).

Respondent had a casino "A" rating, i.e., he was rated by a casino as a good player. The Golden Nugget Hotel Casino maintained a player action rating chart for respondent which reveals that he received a complimentary trip to the casino for the time period February 25 through 27, 1983 (P-6) during which respondent was assigned the use of hotel room 410. At approximately 6:30 a.m. on February 27, 1983, a gun was found by a hotel housekeeper in room 410. An investigation was conducted of the February 27, 1983 incident by Anthony Gatto, who is employed by the New Jersey State Police and has been assigned to the Division of Gaming Enforcement as a Detective for the past six years. Detective Gatto interviewed various employees of the Golden Nugget Hotel and prepared a report of his investigation (P-5). Respondent had checked out of room 410 at approximately 5:00 a.m. on February 27, 1983.

During the course of his investigation, Detective Gatto attempted to contact respondent by telephone at his residence in Philadelphia, Pennsylvania. He left a message with an unidentified person at respondent's phone number, requesting that respondent call him back. Subsequently, he received a return telephone call from a person who claimed he was Mr. Sulla (hereinafter referred as "Sulla"). During the course of the conversation, Sulla said he had no knowledge of a weapon being in room 410 on February 27, 1983, claiming that he did not own a gun. However, he told Detective Gatto that someone on the casino floor named "Bobby" asked if he could use the shower in room 410. He gave

"Bobby" the keys to room 410 which keys were later returned to him. He claims that he had seen this person which he knew only as "Bobby" on one or two other occasions. Detective Gatto told Sulla that the hotel records revealed that he re-registered in room 410 on February 27, 1983, to which Sulla replied "no way". Sulla also stated he had not authorized anyone to re-register.

During this telephone conversation, Sulla told Gatto that he would call him back. Detective Gatto did have a second telephone conversation on March 10, 1983, with a person who identified himself as Sulla.

Detective Gatto did not have any contact with Sulla at any time other than during the two telephone calls. It should be noted that at the hearing, Detective Gatto stated that some of the statements given by Sulla during the telephone conversation appeared to conflict with information which Gatto had received from Casino Shift Supervisor Richard Rewer who was interviewed during Gatto's investigation of the February 27, 1983 incident. Detective Gatto's investigation report (P-5) reveals that on February 27, 1983, a Bob Moore appeared at the Golden Nugget Hotel Casino and claimed the gun (found in room 410) which was turned over to him on that date.

On cross- examination, Detective Gatto stated the following:

1. His investigation of respondent revealed no complaints concerning respondent's behavior while patronizing the casino.

2. He has never observed respondent in the company of any figures reputed to be tied to organized crime, and he has not heard any reports to the effect that respondent keeps company with alleged organized crime figures.

3. There are numerous casino patrons with worse "rap sheets" than respondent, including persons who have been charged with gun offenses.

4. Detective Gatto is not personally aware of any individual being excluded from patronizing a casino solely on the basis of illegal possession of a gun.

5. Respondent was not charged with any criminal offense as a result of the finding of a gun in room 410. Detective Gatto stated that he could not prove certain elements regarding illegal possession of a gun, and for that reason, a criminal action was not pursued.

6. Detective Gatto did not personally see the gun found in room 410.

7. Detective Gatto was not aware of any incidents in which the gun found in room 410 was used for any improper purposes.

8. Nothing in Detective Gatto's investigation revealed that any person saw respondent in the casino in possession of the gun.

9. Detective Gatto never had any communication with respondent prior to telephone conversations with the person who identified himself as Sulla. Further, Detective Gatto was not privy to any conversations that Mr. Brewer allegedly had with Sulla.

10. Detective Gatto questioned the credibility of the person he talked to who identified himself as Sulla based upon information he had been given by Mr. Brewer.

DISCUSSION AND CONCLUSIONS OF LAW

At the hearing, three major evidentiary disputes arose. The first involved respondent's repeated objections to the admission of hearsay evidence (both documentary and oral). Over respondent's objection, hearsay evidence was admitted through the introduction of the Division's documents as well as through the testimony of Detective Gatto. The hearsay evidence was admitted pursuant to N.J.A.C. 1:1-15.8(Residuum rule) and N.J.S.A. 5:12-107a(6). The hearsay was admitted subject to a determination in the rendering of this initial decision as to how much weight, if any, would be given to the evidence.

The second dispute which arose involved a heated debate concerning the applicability of the Residuum Rule and N.J.S.A. 5:12-107a(6) during this proceeding, and whether the Residuum Rule should prevail over §107a(6) or vice versa; or in the

alternative, is the Residuum Rule compatible with §107a(6)? The Division argued that §107a(6) should prevail at this hearing. Respondent argued that the Residuum Rule applied to this hearing, in that no ultimate findings of fact should be made on the basis of hearsay evidence alone, rather, some legally competent evidence must exist.

The third dispute arose when the Division called respondent to testify as its witness, and respondent invoked his Fifth Amendment privilege by refusing to testify in response to all questions asked by the Division with the exception of the following four questions to which respondent answered "yes":

1. Was respondent arrested in Philadelphia, Pennsylvania on September 3, 1981?

2. Did the September 3, 1981 arrest occur at 1108 Crece Street in Philadelphia?

3. Was respondent arrested on October 20, 1982 on Bryn Mawr Avenue, Philadelphia, Pennsylvania and charged with running an illegal lottery?

4. Was respondent registered as a guest at the Golden Nugget Hotel Casino in room 410 on February 27, 1983?

Respondent invoked his Fifth Amendment privilege to all other questions presented to him involving details of the February 27, 1983 gun incident and, details surrounding the September 3, 1981 and October 20, 1982 arrests. The Division alleges that adverse inferences should be drawn from respondent's assertion of his Fifth Amendment privilege. Respondent argued that no such inferences may be drawn.

N.J.S.A. 5:12-71 provides the following in Subsection a:

> The Commission shall, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment. Such provisions shall define the standards for exclusion, and shall include standards relating to persons:

(1) Who are career or professional offenders as defined by regulations of the Commission;

(2) Who have been convicted of a criminal offense under the laws of any state or of the United States which is punishable by more than 6 months in prison or any crime or offense involving moral turpitude; or

(3) Whose presence in a licensed casino would, in the opinion of the Commission, be inimical to the interests of the State of New Jersey or of licensed gaming therein, or both.

The Commission shall promulgate definitions establishing those categories of persons who shall be excluded pursuant to this section, including cheats and persons whose privileges for licensure or registration have been revoked.

Pursuant to N.J.S.A. 5:12-71 the Commission promulgated N.J.A.C. 19:48-1.3a (1),(2),(3) and (4) which set forth the criteria for exclusion. Those criteria state that the exclusion list may include any person defined as follows:

1. Who is a career and professional offender and whose presence in a licensed casino establishment would, in the opinion of the Commission be inimical to the interests of the State of New Jersey or of licensed gaming therein; or

2. Who has been convicted of a criminal offense under the laws of any State or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

3. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

The Division's basis for attempting to exclude respondent rests upon the following criminal and arrest record:

1. Arrests in 1963, 1981, and 1982 on charges of various forms of illegal gambling activites, with all charges being dismissed.

2. The violation of the City of Philadelphia Fire Code in 1964.

3. The 1976 plea of nolo contendere to federal charges of theft from interstate shipment, possession of stolen goods from interstate shipment, conspiracy, and aiding and abetting.

4. The discovery on February 27, 1983 of a gun in room 410 in which respondent had been registered at the Golden Nugget Hotel Casino, which gun was discovered after respondent checked out.

I **CONCLUDE** that there was absolutely no evidence presented that respondent is an associate of a career or professional offender, or that he is a cheat or a person whose licensure privileges have been revoked and further, respondent has not been convicted of any crime involving moral turpitude. Consequently, the question remains whether the Division has presented sufficient proofs to demonstrate by a fair preponderance of the evidence that respondent may be excluded because he is a career or professional offender whose presence in a licensed casino establishment would be inimical, or whether he has been convicted of a criminal offense (federal or State) as defined in N.J.A.C. 19:48-1.3(a)3 which conviction would render his presence in a licensed casino gaming establishment inimical to the interest of the State of New Jersey or licensed gaming therein, or whether respondent's presence in a licensed casino establishment, in general, would be inimical to the interests of the State of New Jersey or licensed gaming.

I CONCLUDE that respondent's offense of violating the City of Philadelphia Fire Code is not relevant to this proceeding and that such a violation (obstruction of exits) does not constitute a criminal offense which would in any way be remotely inimical to the State of New Jersey or casino gaming. Consequently, the offenses to be considered with regard to respondent's exclusion consist of the three arrests for illegal gambling and the February 27, 1983 gun incident.

An exclusionary hearing is a serious one which has significant ramifications for the individual to be excluded, as well as for the casino industry. An exclusionary hearing by its very nature involves presentation of proofs as to an individual's character and

reputation. A finding that a person shall be placed on the exclusion list requires the dissemination of considerable personal information about the person to be excluded (including his photograph) to all licensed casino hotel facilities, and requires all casino licensees (and individual licensees) to eject from a casino hotel facility any excluded person whose name has been placed by the Commission on the exclusion list. N.J.A.C. 19:48-1.6 and 1.7. Being placed on the exclusion list clearly is a negative statement as to one's character and reputation. On the other hand, the highly regulated nature of the casino industry requires the maintenance of integrity, public confidence and trust in the industry by excluding certain persons with known criminal records, habits or associations. N.J.S.A. 5:12-1b(7).

The thrust of the Division's argument to exclude respondent was clearly stated in its letter summation dated October 9, 1984 wherein the Division alleged the following:

1. The 1976 federal conviction is sufficient in itself to warrant exclusion; and

2. The "totality" of respondent's actions meet the criteria for exclusion on the basis of inimicality pursuant to N.J.A.C. 19:48-1.3(a)4; and

3. In evaluating all the evidence presented at the hearing and by applying N.J.S.A. 5:12-107a(6), the Division has demonstrated by the fair preponderance of the evidence that respondent should be placed on the exclusion list.

4. Respondent has been involved in illegal gambling activities from 1963 through October 1982 and further, his 1976 conviction is an offense generally associated with organized crime; and

5. The Division has proven by a prepondernace of the evidence that respondent knew that there was a gun in room 410, a conclusion which the Division contends can be drawn from the exhibits introduced into evidence, and by the fact that respondent exercised his Fifth Amendment privilege and refused to answer questions pertaining to the February 27, 1983 incident.

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Assuming arguendo that N.J.S.A. 5:12-107a(6) applies to this hearing and if the documentary and oral evidence submitted by the Division as to the three gambling arrests is accepted as undisputed fact, I conclude that the evidence is insufficient to require respondent's exclusion.

The only evidence presented with regard to the 1963 arrest was the abstract of criminal record (P-1) which simply indicates that the matter was "discharged." None of the circumstances of the arrest were presented either by oral or documentary evidence.

The evidence presented by the Division with regard to the 1981 and 1982 arrests for running an illegal lottery consisted of the investigation reports which simply reveal that respondent was arrested at locations where lottery paraphernalia was confiscated. It is undisputed that the 1981 and 1982 charges were dismissed. The disposition of these two matters is extremely significant. Just as the Division argues that it is entitled to rely upon the disposition of the 1976 federal offenses with regard to the issue of the exclusion of respondent, respondent is entitled to rely upon the disposition of the 1981 and 1982 criminal charges. If, for argument's sake, the investigation reports (P-4, P-5) are adopted as fact the information contained in the reports when considered together with the dismissal of both charges, is woefully inadequate to prove by the preponderance of the evidence that respondent is a career or professional offender, or that his conduct is inimical to the State of New Jersey or licensed gaming.

I further **CONCLUDE** that respondent's plea of nolo contendere to the 1976 federal charges also do not warrant his exclusion from licensed casinos. The Division's assertion that the theft from interstate shipment and related charges are offenses which are generally associated with organized crime, is meaningless without proof to support the allegation. The only evidence presented concerning respondent's 1976 offense, is the indictment and disposition of the charges (P-2). Further, the conduct leading to the indictment was an isolated incident which occurred in excess of nine years ago. There was no other evidence presented that respondent has either been charged with or convicted of similiar offenses which might call into question whether or not he was engaged in illegal activity, sufficient to warrant a finding that he was a career or professional offender. The fact that these charges could have resulted in a prison term in excess of six months, does not in and of itself warrant an order of exclusion. Further, the disposition of the federal charges is not inimical to the interest of the State of New Jersey or of licensed gaming. The Division has presented a conclusion that the 1976 charges are inimical, without explaining why. N.J.A.C. 19:48-1.3 seems to require a nexus

between the nature of the criminal offense for which a person has been convicted and the interest of the State of New Jersey or licensed gaming. The 1976 conviction is not in any way related to the gaming industry and there is no demonstration that respondent's actions in 1976 would negatively impact upon the integrity and stability of casino gaming operations.

With regard to the February 27, 1983 incident, again, viewing the New Jersey State Police investigation report in the most favorable light to the Division and considering the testimony of Detective Gatto that criminal charges were not filed because Gatto felt he would not be able to prove certain elements relating to the possession of the gun, I **CONCLUDE** that the proofs are inadequate to demonstrate by the preponderance of the evidence that respondent illegally possessed a gun within a licensed casino. The investigation report as well as Detective Gatto's testimony do not provide any evidence that a gun was found in respondent's possession, that respondent was seen at any time in the casino with the gun, and further the alleged statements of respondent concerning the man known as "Bobby" raises a serious question as to whether or not respondent did in fact know that there was a gun located in room 410. Further, it is significant that the investigation report reveals that the gun was turned over to Bob Moore on February 27, 1983.

Finally, the Division has argued that adverse inferences may be drawn from respondent's assertion of his Fifth Amendment privilege. I **CONCLUDE** that with regard to the questions that were asked of respondent concerning the September 3, 1981 and October 20, 1982 arrests that assuming arguendo that adverse inferences were drawn, the adverse inferences would add nothing further to the Division's case. All of the questions asked related to information already contained in the investigation reports. Regarding the questions asked by the Division of respondent concerning the February 27, 1983 incident, two of the questions would have required respondent to state whether he had a gun in his possession on February 27, 1983. Evidence Rule 24 states that a matter will incriminate

(a) if it constitutes an element of a crime against this State, or another State or the United States, or

(b) is a circumstance which with other circumstances would be a basis for a reasonable inference of the commission of such crime, or

(c) is a clue to the discovery of a matter which is within causes (a) or (b) above; provided, a matter will not be held to

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> incriminate if it clearly appears that the witness had no reasonable cause to apprehend a criminal prosecution. In determining whether a matter is incriminating under clauses (a) (b) or (c) and whether a criminal prosecution is to be apprehended, other matters in evidence, or disclosed in argument, the implications of the question, the setting in which it is asked, the applicable statute of limitations and all other factors, shall be taken into consideration.

I **CONCLUDE** that respondent properly invoked his Fifth Amendment privilege with regard to the questions which directly required him to state he had possession of a gun on February 27, 1983. No adverse inferences may be drawn therefrom, since there was a reasonable apprehension of criminal prosecution. These questions were asked of respondent in the presence of the New Jersey State Police detective who investigated the matter. After respondent was called as a witness, Detective Gatto was called to testify, and at that time, he stated that no criminal charges had been filed because he did not have enough evidence to prove the elements of illegal possession of a gun. To compel respondent to incriminate himself at this hearing in front of the very same State Police detective who investigated the matter would be unconscionable, since the threat of prosecution could become very real if respondent were compelled to answer those questions. With regard to the other questions which were asked of respondent concerning the February 27, 1983, even if adverse inferences were drawn from the questions, again, they would add nothing further to the Division's case, having assumed for argument's sake that the content of the investigation report (P-5) was accepted as fact.

I therefore **CONCLUDE** that the Division has failed to meet its burden by the preponderance of the evidence that respondent shall be excluded from licensed casino establishments.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the Division's petition shall be **DISMISSED**, and respondent's name shall be removed from the exclusion list.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 16, 1984
DATE

VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION
Lynn A. McDowell
Principal Legal Analyst

Mailed to Parties:

NOV 21 1984
DATE

OFFICE OF ADMINISTRATIVE LAW

bc

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EXHIBITS INTRODUCED INTO EVIDENCE

P-1 Extract of Criminal Record of Albert Sulla from City of Philadelphia Police Department

P-2 Indictment No. 26-52 in the matter of United States of America v. Albert Sulla, United States District Court for the Eastern District of Pennsylvania (6 pages)

P-3 Investigation Report of the Philadelphia Police Department, dated September 3, 1981 (11 pages)

P-4 Investigation Report of Philadelphia Police Department, dated October 20, 1982 (5 pages)

P-5 New Jersey State Police Investigation Report, dated March 7, 1983 (9 pages)

P-6 Respondent's player rating for Golden Nugget Hotel Casino (2 pages)

P-7 Undated letter from Vincent A. DiGirolamo, Second Deputy, Clerk of Quarter Sessions, addressed to Division of Gaming Enforcement

RESPONDENT'S EXHIBITS:

R-1 Letter from Edward Reif, Esq. addressed to Harry Goldenberg, Esq., dated September 21, 1984

R-2 Findings of Fact and Conclusions of Law re: Motion to Suppress In the Matter of Commonwealth v. Albert Sulla, dated March 11, 1982 (4 pages)

WITNESSES

FOR PETITIONER:

Anthony Gatto
Albert Sulla

FOR RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-144
OAL DOCKET NO. CCC 4776-84
REGISTRATION NO. 30022-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Complainant,	:
v.	:
ROY TELLER,	:
Respondent.	:

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 20, 1985,

IT IS on the 4th day of December 1985, ORDERED that the initial decision in this matter is modified as follows:

(1) The cite to N.J.S.A. 5:12-86d at p. 2 of the initial decision is corrected to read N.J.S.A. 5:12-86(c)(4);

(2) Based upon the finding at p. 3 of the initial decision that the respondent was convicted in 1981 of robbery and armed robbery, Mr. Teller is disqualified by reason of his conviction of a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1);

(3) The conclusion that rehabilitation is "irrelevant as an issue," (initial decision at 5) is rejected. We find that, in view of the respondent's intentional nondisclosure, he has not affirmatively demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90(h); and

(4) The discussion of whether the respondent's robbery conviction constitutes an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4) (initial decision at 5) is rejected as unnecessary in view of the findings in (2) and (3) above.

IT IS FURTHER ORDERED that Roy Teller is disqualified substantially for the reasons stated in the initial decision as modified which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, Roy Teller's disqualification is waived pursuant to N.J.S.A. 5:12-91(e), permitting him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that Roy Teller is prohibited from applying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Roy Teller, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4776-84
AGENCY DKT. NO. 83-144

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
ROY TELLER,
Respondent.

Joanne Cocchiola, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Roy Teller, pro se

Record Closed: December 20, 1984 Decided: February 4, 1985

BEFORE **JEFF S. MASIN**, ALJ:

The Division of Gaming Enforcement seeks an order from the Casino Control Commission revoking the casino hotel employee registration of Roy Teller. Mr. Teller requested a hearing on the proposed revocation, and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on October 18, 1984, and a Prehearing Order was issued on November 2, 1984. A hearing was held before Administrative Law Judge Jeff S. Masin at the Camden County Courthouse, Camden, New Jersey, on December 20, 1984.

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ISSUES

The Division proceeds against Mr. Teller on the basis that his conviction for robbery, a violation of N.J.S.A. 2A:141-1 when committed, now equivalent to a violation of N.J.S.A. 2C:15-1, and robbery while armed, then contrary to N.J.S.A. 2A:151-5, equivalent to N.J.S.A. 2C:15-1, require automatic disqualification from licensure, pursuant to N.J.S.A. 5:12-86c. The Division also argues that Mr. Teller's continued registration would be inimical to the policies of the Casino Control Act and the interests of the casino industry, thus requiring revocation of the registration, pursuant to N.J.S.A. 5:12-86d.

In addition to the above grounds for revocation, the Division contends that Teller failed to disclose his convictions on his Personal History Disclosure Form, and that since that information was material to registration, revocation is required, pursuant to N.J.S.A. 5:12-86b.

In response to the Division's contentions, Mr. Teller does not deny that he was indeed convicted. He argues that he has rehabilitated himself from the adverse affects of the convictions, and that he therefore should be permitted to remain registered. N.J.S.A. 5:12-91d.

THE EVIDENCE

As noted above, Mr. Teller did not deny that he had been convicted of robbery and armed robbery. The indictment charged that he had forcibly and with the use of a revolver taken $90 from a Mr. Foster. The incident occurred on December 22, 1978. The conviction was entered against Teller after he retracted his plea of not guilty and entered a plea of guilty to the charges on December 11, 1980. The sentence was imposed on January 5, 1981, and consisted of an eight to ten year state prison sentence on the first count and a one to two year consecutive sentence on the second count, both sentences being suspended and Teller placed on probation for four years consecutive with a prior probation. In addition, a wage execution was ordered, with monies to be divided between the Domestic Relations Court for support purposes and a outstanding municipal court fine.

Mr. Teller also did not deny that he had been convicted on November 6, 1978, of one count of breaking and entering on an indictment returned against him in Cumberland County for an incident which occurred on December 20, 1977, in Vineland. For that offense, Teller was sentenced to the Cumberland County Jail for three months, with the sentence being suspended, and a two year probation being imposed, along with a $150 fine.

In view of the certified copies of the convictions which were placed in evidence along with Mr. Teller's admission of his convictions, I **FIND** that he was indeed convicted of the offenses of breaking and entering, robbery, and robbery while armed.

With respect to the armed robbery, Teller testified that Mr. Foster asked for a ride in Teller's van at 4:00 in the morning. Another passenger, Fred Russell, pulled a weapon on Foster, while Teller was fixing the van. Teller was unaware of the robbery or the weapon and found out about the incident three days later. Russell was a friend of Teller's, and Russell knew Foster. Russell and Teller had been out celebrating a birthday.

With respect to the breaking and entering, Mr. Teller testified that he worked at the garage where the incident occurred, and that he turned himself in.

Mr. Teller is still on probation. He has never been charged with any violations. He reports to his probation officer every month, and is paying his fine through the wage execution.

Mr. Teller testified that with respect to his Personal History Disclosure Form, his 43-year-old sister filled out his application along with others for her nieces and nephews. He was working in Vineland at the time, and had signed the form in blank. His sister was unaware of his convictions. Teller testified that he did not read the pages of the document prior to signing the blank form. He also initialed each page, despite not reading them.

Mr. Teller is now employed at Bally's casino, where he has been working as a shoeshine man for two years. He has been married for four years, and has three children whom he supports, along with another child. His wife is not employed. He was previously employed at Playboy casino for six months, and quit to become a mechanic. He worked as a busboy at Playboy.

Mr. Teller testified that he moved away from the Atlantic City area in the early 1980's, and now lives in Newfield. He is 27 years old, and is a graduate of high school.

In addition to his own testimony, Mr. Teller presented a letter from Virginia Holliday, assistant general manager. Ms. Holliday noted that since his employment on June 29, 1983, in the public areas division of Bally's Park Place Casino-Hotel, Mr. Teller has maintained an excellent attendance record, and a desire and incentive to do his job "on a professional level." Ms. Holliday considers him a valuable asset to his department, and believes that he would be "of much further asset to the Division by having his license."

CONCLUSIONS

Mr. Teller has been convicted of a serious offense, armed robbery. The incident occurred some six years ago. Since that time he has not been in any further trouble, and has maintained a reasonable employment record. He appears to be a good employee at Bally's.

The most serious problem with Mr. Teller's position at this point is his failure to advise the Division of his convictions. They were not listed on his Personal History Disclosure Form. According to counsel for the Division, an attempt was made to contact Mr. Teller, as is normally done in Division investigations, but after attempting to get in touch with him at 45 South Sovereign Avenue, the address which they had for him, they never heard from him. Mr. Teller testified that the building has been torn down for some time.

I **FIND** that Mr. Teller's evidence concerning having his sister fill out the form, while not inconceivable, was lacking in sufficient credibility to carry his burden of providing a significant reason for his failure to disclose. While the ultimate burden of establishing that there exists grounds for revocation is upon the petitioner, where as here, there is no dispute that the criminal convictions were not disclosed, there clearly is a burden placed on the respondent to bring forth a credible explanation for not listing the convictions. Where the respondent fails to come forth with such evidence to a signficant degree, the Division has carried its burden of establishing by a preponderance of the evidence grounds for revoking the registration.

I **CONCLUDE** that the continued registration of Mr. Teller would be improper because he intentionally failed to disclose material information relevant to licensure. N.J.S.A. 5:12-86(b). I **FIND** that his story concerning his sister's involvement and his filling out the form in blank was unsupported by sufficient evidence to overcome the implications of the lack of any disclosure. His sister's failure to testify in support of his story is a factor detracting from the strength of his position.

With respect to the question of the inimicality of Teller's prior convictions, I **CONCLUDE** that the seriousness of the armed robbery conviction is limited in this context by Teller's limited role in the casino hotel operation, and the age of the conviction. Mr. Teller was approximately 21 years at the time of the incident, and has been in no trouble since that time, apparently successfully handling his probation. He seems to have settled down into a family routine, changed his residence from the run-down and crime-ridden Atlantic City neighborhood where he was previously living, and become a solid employee. Were it not for the failure to disclose, I would be inclined not to find inimicality. However, since the failure to disclose is dispositive, such a finding is unnecessary.

Mr. Teller appears to have done much to rehabilitate himself from his past lifestyle. His failure to disclose information clearly material to the registration process, that is, his arrests and convictions, does detract from his showing of rehabilitation. It appears that there is perhaps still some residual affect of his prior lifestyle of law evasion.

I **CONCLUDE** that in light of his intentional failure to disclose material information, rehabilitation is irrelevant as an issue.

For the reasons expressed, it is **ORDERED** that the casino hotel registration of Roy Teller be **REVOKED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Feb 4, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

February 4, 1985
DATE

Bernadette P. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 06 1985
DATE

Ronald L. Parker/sho
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment No. 722-77, with attached Judgment of Conviction (certified copies)

P-2 Indictment No. 297-79, with attached Judgment of Conviction (certified copies)

P-3 Personal History Disclosure Form No. 4

On behalf of respondent:

R-1 Letter from Mrs. Virginia Holliday

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-99
OAL DOCKET NO. CCC 4836-84
APP. NO. 2552-11
LICENSE NOS. 01741-21 &
01141-60

APPLICATION OF CURTIS D. TIEGS

FOR A CASINO KEY EMPLOYEE LICENSE

FINAL ORDER

A hearing on this matter having been held in the Office of Administrative Law (OAL) and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions thereto; and the Commission having considered the entire record of these proceedings at its public meeting of February 13, 1985,

IT IS on this 2nd day of OCTOBER 1985, ORDERED that the recommendation of the OAL to grant the application for licensure is rejected for the following reason:

(1) The ALJ found no evidence to indicate that the applicant does not possess the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2). The Commission disagrees and finds that, under all the circumstances, the applicant's claim of charitable deductions on his federal income tax returns for the years 1979 through 1982 does impugn his otherwise adequate demonstration of the good character, honesty and integrity required of applicants for a casino key employee license.

IT IS FURTHER ORDERED that the application of Curtis D. Tiegs for a casino key employee license is denied based upon his failure to establish by clear and convincing evidence that he possesses the good character, honesty and integrity required of applicants for a casino key employee license by N.J.S.A. 5:12-89(b)(2); and

IT IS FURTHER ORDERED that Curtis D. Tiegs is prohibited from reapplying for any license, qualification or approval required under the Casino Control Act except pursuant to the provisions of 19:41-8.8; and

IT IS FURTHER ORDERED that, notwithstanding any other provision of this order, Curtis D. Tiegs may retain his casino employee license (No. 01741-21) and his gaming school instructor license (No. 01141-60); and

IT IS FURTHER ORDERED that copies of this final order be served upon Curtis D. Tiegs, the Office of Administrative Law, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

Attention: Exception File

State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS P. O'BRIEN
DIRECTOR

ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JAMES F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

JAN 23 1985
CASINO CONTROL COMMISSION
LEGAL DIVISION

January 22, 1985

Walter N. Read
Chairman
Casino Control Commission
3131 Princeton Pike Office Park
Building # 5, CN - 208
Trenton, New Jersey 08625

Re: Curtis Tiegs, Applicant for Licensure As A
Casino Key Employee
DGE # 2552-11
OAL Docket Number: CCC 4836-84
Agency Reference Number: 84-EA-99

Dear Chairman Read:

The above named applicant applied for licensure as a casino key employee license as a pit boss in the game of blackjack, roulette and baccarat. By way of a recommendation letter dated May 17, 1984, the Division objected to Mr. Tiegs' licensure in that he lacked the necessary honesty, good character and integrity as was required by the Casino Control Act. The matter was sent to a hearing before the Honorable Jeff S. Masin on November 15, 1984. The Administrative Law Judge issued his Initial Decision with respect to this matter on January 3, 1985. The Division files the following exceptions.

While employed in the gaming industry, the applicant joined the Universal Life Church. His sole reason for joining the church was for the tax savings advantages that he testified it would offer him. The manner in which he joined the church was that he answered an ad in a magazine and sent $20 to become an ordained minister in the Universal Life Church. (T 19 at 2-13). The applicant testified that his inducement to join the church was as a result of receiving "reams of information from the Universal Life Church". (T 16 at 17-21). The only material that was produced and introduced into evidence out of those "reams" of materials that the applicant allegedly received was one letter which was marked P2 in

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evidence. As a result of joining the Universal Life Church, the applicant deducted various amounts from his federal income tax returns.

In 1979, the applicant declared a gross income of $27,714 and deducted $2,500 in contributions to the church. In 1980, the applicant claimed a gross income of $30,022 and had deductions amounting to $9,460 to the church. In 1981, Mr. Tiegs reported a gross income of $36,090 and deducted $14,245 to the church; in 1982, a gross income of $39,238 with a deduction of $18,535 to the Universal Life Church. These ever escalating "deductions" as a donation to the Universal Life Church were in fact used by Curtis Tiegs for his personal living expenses. (T at 41-43). When questioned concerning his escalating deductions to the Universal Life Church, the applicant explained with respect to his 1981 deduction that the reason he contributed more to the church was "I was making more money and I had less personal bills". (T at 49, 5-6). The absurdity of that answer is clearly apparent. The reason that the applicant had fewer personal bills was the Universal Life Church was paying his personal living expenses.

His answer that he had fewer personal bills is highly specious and indicative of the applicant's lack of integrity. It is suggested, the Division respectfully submits that the real reason the applicant increased his deductions to the Universal Life Church was his increasing greed. The applicant testified that he used those monies which were deposited into a checking account, over which he had access, for the payment of such things as his phone bill, cable television bill, his Sears Charge account bill and the purchase of a new car, etc.

Once Mr. Tiegs was no longer able to take the deductions to the Universal Life Church, because of an Internal Revenue Service audit, the licensee quit the church. (T at 54-55). The sole purpose for Mr. Tiegs joining the Universal Life Church was for the "tax advantages". (T at 54, lines 22-25). Additionally, after his audit notification, he renounced his membership in the church and he took whatever money was left in the Universal Life Church checking account and transferred that into his own personal name and also transferred ownership of the automobile that had been purchased back into his own personal name.

The Division contended in its recommendation of May 17, 1984, and also throughout the course of the hearing, that the deductions taken by Mr. Tiegs were clearly improper and illegal and were tantamount to theft or attempted theft. As a result the Division took the position that Mr. Tiegs lacked the necessary honesty and good character and integrity as is required by the Casino Control Act.

The Administrative Law Judge stated that the mere fact that an individual's deductions may be denied by the IRS, particularly in an area as complex and sensitive as that of a religious expense, is certainly not an indication of lack of integrity. (Initial Decision at 4). The Division is not challenging Mr. Tiegs' membership in the Universal Life Church. Clearly, if a person wishes to join in a religious organization he or she is more than free to do so in this country. What is questionable is the method of taking charitable deductions for the purpose of avoiding the payment of lawfully due and owing taxes. The Division is not questioning the legitimacy of the church doctrines as stated by the Administrative Law Judge (Initial Decision at 4) but rather questioning whether it is fraud and indicative of a complete lack of honesty and financial integrity to take deductions to this organization where the benefit of that deduction enures to the donor, and where anyone with an ounce of integrity would have questioned the legitimacy of such an avoidance device. Note that at no time did the applicant ever seek a legal or accounting opinion as to the legitimacy of this program. Indeed, while he maintained that he was convinced of the program's legitimacy upon receipt of "reams" of material when he responded to a magazine advertisement, no such documents were placed in evidence by him.

Clearly, the Administrative Law Judge completely overlooked all of the cases that were cited by the Division of Gaming Enforcement which clearly indicates that the type of deductions that were taken by Mr. Tiegs were improper. All of the cases and revenue rulings applicable to this case were decided either prior to or during Mr. Tiegs' involvement with the Universal Life Church. A 1978 Internal Revenue ruling 78-232 holds that a charitable contribution is synonymous with a gift and that no part of the money can be available for the taxpayer's benefit. This ruling also involved an individual who claimed to be a minister and who was using his salary for living expenses after having "donated" that money to his church. Accordingly, the money deposited by the taxpayer to his church was not deductible as a charitable contribution.

American Guidance Foundation v. United States Of America, 490 Fed. Supp. 304, 307 (1980) sets forth the criteria as to what constitutes a church for tax purposes. The case holds that private religious beliefs, practiced in the solitude of one's home, cannot transform a man's home into a church for the purposes of the Internal Revenue Code.

The case of Thomas Hall and Gene Hall v. Commissioner of Internal Revenue, 41 C.C.H. Tax Ct. Memo 624 (1980), holds that to qualify as a charitable contribution to a church no amount of that money can inure to the benefit of the donor.

In that case the taxpayer contributed amounts to the Christian Layman's Union claiming a charitable contribution. Those contributions were returned to the taxpayer for his own personal use. Clearly, this type of deduction was improper at the time of the Tiegs' involvement. See also William and Lorna Hall v. Commissioner of Internal Revenue, 44 C.C.H. Tax Ct. Memo 151 (1982) which involved contributions to the Church of United Brotherhood that were used for the personal living expenses of the donor. These contributions were also disallowed.

All of the deductions made by Mr. Tiegs had no aura of authenticity. Very simply stated he was using the same money that he donated to the church for his own personal living expenses and did not think it was unusual to give a contribution to the church and still use that same money. (T at 51, lines 4-7). See also T page 46, lines 15-23 where Mr. Tiegs indicates that his understanding of a gift to a charitable organization is one in which the donor would not be able to use those monies for his own personal use.

It is interesting to note that Mr. Tiegs cited, in support of his position that he possessed the necessary honesty, good character and integrity for licensure as a casino key employee, the case of Barbara Kilbane and John Kilbane, a matter that was previously heard by the Commission and the Office of Administrative Law. At page 75 of the Transcript, Mr. Tiegs cited the case of Barbara Kilbane to justify his position of taking deductions to the Universal Life Church. (See application of Barbara M. Kilbane and John R. Kilbane for application for licensure as casino key employees, OAL Docket number CCC 3787-84 and CCC 4729-84). That case was decided by the Office of Administrative Law on October 26, 1984 and was presented at the open public meeting of the Casino Control Commission on December 12, 1984. The factual situation of the Kilbane case is superficially similar to that of Curtis Tiegs in that the Kilbanes also donated money to a church and used that money for their own personal living expenses. The Administrative Law Judge in that case based her decision , finding that the Kilbanes possessed the necessary honesty, good character and integrity, ostensibly upon the fact that the donations to the church and the filing of one income tax return was an isolated incident (Initial Decision at 17) and that they voluntarily divested themselves from the church when learning that the main church was being audited. (Initial Decision at 8 and 16).

The Commission on December 12, 1984, in granting the Kilbanes' requests for licensure relied on the Administrative Law Judge's opinion that this was just an isolated incident and that the Kilbanes' had voluntarily divested themselves of the church prior to being audited by the Internal Revenue Service.

Regarding the Kilbanes' case, Commissioner Thomas stated in his comments during the Casino Control Commission public meeting of December 12, 1984, (Meeting 84-49) "I feel that their conduct in one taxable year, their naive conduct in one taxable year falls short of a willful attempt to evade or defeat federal income taxes...(T 171 at 18-21). Commissioner Burdge agreed and stated "they got out before the IRS audited their returns." (T 172 at 14-15). Chairman Read stated during his remarks, "I am, I must say, influenced by the fact that Mrs. Kilbane did resign before she was even notified of an audit". (T at 174, 18-20). Commissioner Jacobson in voting for the Kilbanes licensure, emphasised that he was not convinced that these types of deductions had the appearance of legitimacy, but that under the circumstances he could overlook their transgression in engaging in this conduct. (T 176-7 to 177-9). Clearly, it was the consensus of the Commission, with respect to the Kilbanes, that their situation was an isolated incident which they took action to correct prior to being focused upon by the IRS.

In this instance, that rational of the Kilbane's decision is not applicable. Mr. Tiegs followed a pattern for four years of increasing the donations that he made to the church which would subsequently be used for his living expenses, from $2,500 in 1979 up to $18,535 in 1982. Clearly this was not an isolated incident but a course of conduct that was continuing over a period of years. Additionally, Mr. Tiegs made no effort to terminate his relationship with the church prior to his audit. It was only after the Internal Revenue Service audited Mr. Tiegs that the licensee decided to dissolve the relationship. Accordingly, the mitigating circumstances that may have existed in the Kilbane case do not exist with respect to Curtis Tiegs.

The Division suggests that Commissioner Zeitz' comments with regard to the Kilbanes are as applicable, if not even more so, with respect to the case of Curtis Tiegs. He stated "I don't think you have to have a whole lot of experience with IRS returns to recognize this scheme for what it is , was and is." (T at 175, lines 17-20).

The Division suggests there can be no question that the actions of Mr. Tiegs were willful in attempting to avoid his lawful tax liability under the Internal Revenue Code. Additionally, it should be noted that in the Kilbane case witnesses were called who testified that they actively induced the Kilbane's to join the Freedom Church of Revelation. As to Mr. Tiegs, the only inducment he received to join the Universal Life Church was the material he received by mail following his answering an ad in a magazine.

The Division would like to stress that the Administrative Law Judge has apparently misinterpreted the objection raised by the Division during the course of this hearing. The Division is not questioning the tenets of the church. As stated in the Initial Decision at 4 it is not the proper business of government to examine the sincerity of the beliefs of church members or the validity of the doctrines of the church. The Division of Gaming Enforcement has not and would not question the validity of a particular individual's religious beliefs. That is clearly not the issue in this case. The Administrative Law Judge has misinterpreted the Division's position and has taken the position that the Division is challenging the doctrines of the church. To reiterate: the question is whether or not an individual is improperly avoiding the lawful payment of taxes by claiming to be minister of a church. In that respect a limited number of questions were asked to show the purpose and procedures of his ministry. Mr. Tiegs did not have a church in the normal sense of the word and all of the money that was donated to his ministry went for his own personal expenses. (See T at 41-43).

The Division takes the position that it has clearly been established that Mr. Tiegs exhibited an on-going course of conduct in unlawfully avoiding his income tax liability. This indicates that he lacks the necessary honesty, good character and integrity as required by the Casino Control Act. Further, the mitigating circumstances that may have existed in the matter of Barbara M. Kilbane and John R. Kilbane do not exist in this case and the reasons for granting their licenses before the Commission would not exist in Mr. Tiegs' situation. The Division would therefore request that the Commission reverse the Initial Decision of the Administrative Law Judge and deny Mr. Tiegs' application for licensure as a casino key employee.

Respectfully submitted:

THOMAS R. O'BRIEN
Director
Division of Gaming Enforcement

By: _____
Ralph L. Fusco
Deputy Attorney General

je
cc: Ronald I. Parker, ALJ
Dennis Daly, Esq.
Curtis Tiegs
190 Corwen Court
Mays Landing, NJ 08330

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4836-84

AGENCY DKT. NO. 84-EA-99

CURTIS D. TIEGS,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

Curtis D. Tiegs, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: November 15, 1984 Decided: December 28, 1984

BEFORE **JEFF S. MASIN,** ALJ:

Curtis D. Tiegs applied to the Casino Control Commission for licensure as a casino key employee with a position designation of pit boss for blackjack, roulette and baccarat. He had originally been licensed as a casino employee. On May 17, 1984, the Division of Gaming Enforcement filed a objection to Mr. Tiegs' licensure with the Casino Control Commission (Commission). Mr. Tiegs requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Administrative Law Judge Jeff S. Masin on August 9, 1984 and a prehearing order was issued thereafter. A hearing was held

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before Judge Masin at the Ventnor Municipal Court on November 9, 1984. Thereafter, Mr. Tiegs submitted some documentation which he had referred to at the hearing and these documents were received by the administrative law judge on November 15, 1984, at which time the record closed.

THE ISSUE

The Division's letter of objection raised questions concerning Mr. Tiegs' association with the Universal Life Church (ULC), an organization in which Mr. Tiegs held the title of Reverend and a Certificate of Credentials as a Minister. The Division noted that Mr. Tiegs had taken certain tax deductions on his Federal Income Taxes for the years 1979 through 1982, which had eventually been disallowed by the IRS. Because of the nature of these deductions and the IRS' rejection of their propriety, the Division contends that Mr. Tiegs does not have the requisite financial integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)1, and also argues that he does not have the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b)(2).

EVIDENCE AND ARGUMENT

There is no dispute that Mr. Tiegs deducted significant amounts of income from his tax returns for the years 1979 to 1982, claiming that he was permitted to do so because of his holding the position of minister in the Universal Life Church. Mr. Tiegs agreed to pay IRS the penalties, interest and back taxes which totalled approximately $17,000. The deductions themselves totalled approximately $45,000.

According to Mr. Tiegs' testimony, he first became involved in the Universal Life Church in 1979. He forthrightly advised that his reason for joining the Church was his belief that it provided a legal method of reducing his tax burden. Evidence presented indicates that the Universal Life Church, which is headquartered in Modesto, California, is an incorporated body which had, after some controversy, obtained a tax exempt status from the IRS. This status was granted by the IRS in April of 1976 and a letter authorizing the tax exemption was issued on April 13, 1976.

Mr. Tiegs first saw an advertisement for the ULC in Reason Magazine in late 1979. Because he saw it as a legal way of avoiding taxes, he sent for more information and received "reams" of material. One of these was the letter from the IRS granting tax

exempt status. Mr. Tiegs then sent a donation of $20 to the ULC as a membership fee and was sent six self-learning cassette tapes. Without taking any tests whatsoever, he was "ordained" as a minister of the ULC in late 1979. A certificate from the Universal Life Church, Inc. of Modesto, California indicated that Mr. Tiegs was ordained on July 19, 1979 was placed in evidence. Mr. Tiegs saw nothing particularly unusual about the method by which he obtained ordination, as he was aware from newspapers and magazines of others who had received ministerial status through this type of procedure.

Mr. Tiegs testified that the creed of the ULC is to "do that which is right." Any other form of worship is then left up to individual congregations.

It is not necessary for the purposes of this decision to detail the exact nature of the congregation which Mr. Tiegs established and the activities of the congregants[1]. It is sufficient, in view of the lack of any dispute, to note that the IRS, while granting tax exempt status to the ULC, Inc., has not seen fit to allow the types of deductions that Tiegs took. Tiegs' own congregation was not incorporated, this being the procedure of the ULC, Inc. Tiegs used the tax exempt number of the headquarter's church, following directions contained in the literature which he had received and which has been forwarded as part of the evidence in this case.

Mr. Tiegs noted that he would make contributions to the church of his salary (not salary received as a minister) and from his personal checking account. He maintained a ULC account in a bank in Atlantic City, which he signed as Reverend Tiegs. He and two other church members had access to the account and no money was ever taken out of it by the headquarter's church. When Tiegs severed his relationship with the ULC following the IRS denial of his deductions, he took the money in the ULC account as his own and also had an automobile, which had been placed in the ULC name, transferred to his own name. The car had been paid for out of the ULC account.

Among other expenses paid for by monies from the ULC account were credit cards and telephone bills for the Tiegs' residence. The information which Tiegs had received from the church indicated that he could deduct practically everything, other than food and clothing.

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[1] The congregation consisted of about 15 persons who met occasionally for services.

CONCLUSIONS

The evidence presented by Mr. Tiegs forthrightly established that he joined the ULC for the sole purpose of limiting his tax liability. Although the tenets of the church seem rather mebulous, it is not the proper business of government to examine the sincerity of the beliefs of church members or the validity of the doctrines of the church. In this case, it is sufficient to note that Mr. Tiegs was denied deductions which he had claimed as a result of his status with the church and that upon the denial and after consultation with an attorney, he agreed to pay the monies to the IRS and decided to severe his relationship with the ULC.

The Division questioned whether Mr. Tiegs' activities with respect to his tax returns demonstrates some lack of financial integrity. I fail to see how such a conclusion can be reached, based on the evidence in this case. While Mr. Tiegs joined a religious body for reasons which were solely related to the potential for tax savings, it is certainly well recognized in this country that legitimate tax deductions may be pursued and perhaps one could consider Tiegs' involvement with this organization, separate and apart from the sincerity of his beliefs in "doing good" and helping others, as a means of sheltering his income from taxes, a well recognized procedure carried on by many individuals who have no religious affiliation whatsoever[2]. While Mr. Tiegs attempt to deduct monies was rejected by IRS, he was not assessed any penalties based on fraud. I can find nothing about this situation which demonstrates that Mr. Tiegs does not have financial integrity. The mere fact that someone's deductions may be denied by the IRS, particularly in an area as complex and sensitive as that of religious expenses, is certainly not an indication of a lack of integrity.

With respect to Mr. Tiegs' good character and honesty, I also **FIND** no evidence to indicate that he does not possess these. He was quite honest in indicating his reason for joining the ULC and made no pretence that he did so for any reason other than to save taxes. The recommendations received in evidence on his behalf certainly speak highly of him. In my view, it would be grossly unfair to impugn his integrity and honesty because of his attempt to take advantage of the rather liberal treatment afforded persons holding

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[2] The question of the allowance of tax shelters is one which is the subject of debate in connection with tax reform proposals.

religious status under the IRS laws and regulations. Further, it would be totally inappropriate to consider whether Tiegs' religious involvement was sincere[3]. While he may not have been involved in an organization which fits the "traditional" mold of churches and religious organizations, the headquarter's operation of which his church was a part has been granted tax exempt status. Whether Tiegs honestly believes in "doing right" is not properly before this administrative body. If his Church ordains ministers in a rather unusual way, it is not up to this body to decide on the propriety of such procedures.

The entire area of the relationship of religious organizations and personages to the tax structure in this country is a sensitive one. Great care must be taken before belittling the integrity of individuals because they fail to obtain deductions which they thought they could because of their religious activities. I **CONCLUDE** that Mr. Tiegs sincerely believed that the procedures used by him were legitimate ways of obtaining deductions and saving taxes. Therefore, I can find no basis whatsoever for finding that he has not established his good character, honesty and financial integrity by clear and convincing evidence.

In deciding this case, it seems most important to take a very liberal attitude toward the circumstances. There is certainly, particularly in light of Mr. Tiegs' honest admission of the purpose of his joining this church a tendency to view the situation as questionable. However, in determining the matter it is necessary to take the broadest possible view of the situation. To do otherwise would create a serious to risk intruding on extremely touchy grounds.

CONCLUSION

I **CONCLUDE** that Mr. Tiegs does have the requisite good character, honesty and integrity and financial integrity for licensure as a casino key employee. With respect to the position designations, Mr. Tiegs' representations that he had met the requirements for blackjack and roulette have not been challenged. He admitted that he did not have enough experience to be a pit boss for baccarat. Unless he presents evidence of the completion of additional training qualifying him for that designation, then his casino key employee license should be limited to blackjack and roulette.

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[3] Teigs testified that he and church members discussed problems and tried to help people. He had been consulted by people about their problems before he joined the ULC.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 28, 1984
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

12/31/84
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 0 3 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

On behalf of petitioner:

P-1a Letter of October 19, 1984 from Peter Sapio

P-1b Letter of October 20, 1984 from Leonard Yaskoweak

P-1c Letter of October 20, 1984 from Mr. and Mrs. C.R. Judick

P-1d Letter from Brad Johnson

P-2 Letter of April 13, 1976 from Internal Revenue Service to Universal Life Church, Inc., Modesto, California

P-3a 1979 Amended Tax Return

P-3b 1980 Amended Tax Return

P-3c 1981 Amended Tax Return

P-3d 1982 Amended Tax Return

P-4 Schedule of payments

P-5 1983 United States Individual Income Tax Return Form 1040 with attachments

P-6 Letter of April 7, 1984 from IRS to Mr. Tiegs

P-7 Photocopy of Mr. Tiegs' license

P-8 Letter of November 12, 1984 from Mr. Tiegs with attached statement and materials provided to him by Universal Life Church, Inc.

On behalf of respondent:

R-1 Credentials of Minister, issued July 19, 1979

R-2 Checks: two checks dated September 10, 1982; one check dated September 15 and 24, 1982, respectively

R-3 Checks: one check dated August 9, 1982; three checks dated September 10, 1982

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-85
APP. NO. 45752-21
OAL DOCKET NO. CCC 2474-85

APPLICATION OF ALFRED A. TOMASELLI, JR., FOR A CASINO EMPLOYEE LICENSE (JUNKET REPRESENTATIVE)

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 2, 1985,

IT IS on this 7th day of OCTOBER 1985, ORDERED that the initial decision is modified as follows:

> That portion of the initial decision which recommends the imposition of a $500 fine is rejected as inappropriate in this casino employee application case. The imposition of civil sanctions is only appropriate in proceedings against licensees and registrants. See N.J.S.A. 5:12-108, -129.

IT IS FURTHER ORDERED that the casino employee license application of Alfred A. Tomaselli, Jr., is granted substantially based upon the reasons set forth in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Alfred A. Tomaselli, Jr., the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2474-85

AGENCY DKT. NO. 85-EA-85

ALFRED A. TOMASELLI, JR.,

Petitioner,

v.

DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

George Seltzer, Esq., for petitioner (Alten, Valentine, Seltzer & Shultz, attorneys)

Stephen Cirillo, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: August 12, 1985 Decided: August 26, 1985

BEFORE **STEPHEN W. THOMPSON,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Alfred A. Tomaselli, Jr., to the Casino Control Commission for licensure as a casino employee, permitting him to act as a junket representative. The Division of Gaming Enforcement (Division) objects to the licensure of petitioner asserting that the petitioner lacks the requisite good character, honesty, integrity and business ability within the meaning of sections 89b(2) and 89b(3) of the Casino Control Act (Act), as incorporated in section 90 of the act.

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PROCEDURAL HISTORY

The Division objected to the licensure of the petitioner by letter to the Casino Control Commission, dated March 5, 1985. On April 22, 1985, the petitioner requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law on April 26, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was conducted on June 13, 1985, and the matter was scheduled for a hearing. On August 5, 1985, the matter was heard at the Pleasantville Municipal Building, Pleasantville, New Jersey.

FINDINGS OF FACT

The petitioner is a 42-year-old resident of Lawrence, Massachusetts. On May 18, 1983, the Casino Control Commission awarded a temporary license to the petitioner as a junket representative.

The petitioner has been employed for a number of years as manager/operator of a flower business owned by his father. Rosebud Flowers is comprised of a large retail flower shop and a bridal registry that sells crystal and china products. The store grosses over one-million dollars a year and has a substantial customer base.

Mr. Tomaselli became involved with trips to Atlantic City in April 1981. Mr. Tomaselli and his father were contacted by one James Giarusso on behalf of Mr. John Pradella and asked to participate in a junket to Caesar's Casino Hotel in Atlantic City. Each was charged a $50 service fee. It should be noted that Mr. Giarusso operates a business across the street from petitioner.

Approximately two months later, three or four friends accompanied Messrs. Tomaselli on a trip to Atlantic City. Again, father and son were charged $50 a piece for the trip.

Subsequently, Mr. Pradella spoke with Mr. Tomaselli, Jr. by telephone. Mr. Pradella offered to eliminate the service fee for Messrs. Tomaselli if they would provide 20 to 30 customers for the trips. Mr. Tomaselli, Jr. produced the patrons and neither he nor his father was charged by Mr. Pradella.

Eventually, Mr. Pradella advised petitioner that he would receive a $10 commission for each participant on all subsequent junkets. In 1982, Mr. Tomaselli participated in approximately seven junkets on behalf of Mr. Pradella. For each junket, Mr. Tomaselli received a commission of $10 per person from Mr. Pradella.

Some time in the fall 1982, Mr. Tomaselli was questioned in Caeser's Casino Hotel by agent Robert Barsony of the Casino Control Commission. Mr. Tomaselli was advised that receipt of commissions was improper unless licensed as a junket representative by the Casino Control Commission. Until that time, Mr. Tomaselli was unaware that his activities were in contravention of the interim procedures of the Casino Control Commission.

After his conversation with agent Barsony, Mr. Tomaselli did not participate in any casino junket trips or receive any commissions until he was awarded a temporary license from the Casino Control Commission in May 1983. During the period of his temporary licensure, Mr. Tomaselli conducted one junket trip in conjunction with Mr. Pardella in June or July 1983.

Mr. Tomaselli had not participated in any further casino junket trips since the Division filed its objection letter of March 5, 1985.

It has been stipulated and agreed by the parties that Mr. John Pradella "has at no time, relevant to this application, had any license, permit or registration or any other authority to operate in the gaming industry in the State of New Jersey from the Casino Control Commission."

The Division contends that Mr. Tomaselli has been affiliated with individuals of questionable background, namely, Messrs. Pradella, Fiori, Scabelli and Durando.

Mr. Tomaselli categorically denies any knowledge of the allegation that Mr. Pradella is associated with organized crime. As to Messrs. Mario Fiori, Albert Scabelli and Anthony Scabelli, they are described as one-item business customers of Rosebud Flowers. Mr. Tomaselli is not acquainted with Mr. Frank Scabelli and has met Mr. Dan Durando once in the airport on a trip to Las Vegas, Nevada. The Division contends that the named individuals are identified with organized crime. However, there is not one shred or scintilla of competent or hearsay evidence in the record to substantiate such claims.

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Mr. David Descoteaux has known petitioner for approximately seven years. He described Mr. Tomaselli's reputation in the business community for honesty, good character and integrity as "very good, very business like." Mr. Descoteaux has accompanied Mr. Tomaselli on three trips to Atlantic City.

Mr. Joel Strumph is a wholesale flower distributor who has known petitioner both socially and professionally for approximately 25 years. Mr. Strumph testified that:

> Freddie runs one of the larger businesses in the Boston area, and the reputation about he and his father is probably of the highest and unblemished of anybody in the market. The company has been in business for 40, 50 years — he's been in business for 40 years, and he and his father have the best reputation — and this is a market of thieves, so they shine, they really do.

Upon being asked to form an opinion as to Mr. Tomaselli's good character, honesty and integrity in the social community, Mr. Strumph replied:

> I would say that Freddie's reputation is again the highest in the community.

In addition, petitioner produced a document from the Lawrence, Massachusetts Police Department (P-1) and a character reference from Alderman Raymond H. Johnson, Director of Public Safety, City of Lawrence, Massachusetts (P-2).

With the exception of the Division's contentions regarding Messrs. Pradella's, Fiori's, Scabelli's and Durando's alleged ties to organized crime, all the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-89b(2) and (3)

Pursuant to sections 89b(2) and 89b(3), 90b and 102 of the act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license which would permit him to act as a junket representative must demonstrate, by clear and convincing evidence, his reputation for good character, honesty, integrity and business ability. Pursuant to N.J.A.C. 19:49-2.1(c)1 and 2, a person acting as a junket representative must be licensed as a

junket representative and must be employed by either a licensed casino or a licensed junket enterprise, or must be personally licensed as a junket enterprise.

It is undisputed that Mr. Tomaselli received a commission of $10 per person on approximately seven trips conducted in 1982 in violation of N.J.A.C. 19:49-2.1(c)1 and 2. The petitioner's receipt of commissions and limited junket activities without proper licensure calls into question his good character, honesty, integrity and business ability. However, having accepted the petitioner's credible explanation that he was unaware that he was violating any of the provisions of the Casino Control Act and having considered the unrefuted testimony concerning the petitioner's reputation for good character, honesty, integrity and business ability, I am persuaded that the petitioner has sustained his burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty, integrity and business ability for licensure as a casino employee within the meaning of section 89b(2) and (3) and 90b of the act, as incorporated in section 102 of the act. Furthermore, petitioner promptly sought temporary licensure before involving himself in additional junket activities after learning of the requirements. However, in light of Mr. Tomaselli's licensed junket trip in June or July 1983, in conjunction with Mr. Pradella who is not licensed, it is **RECOMMENDED** that the Casino Control Commission impose a fine of $500 against Mr. Tomaselli. The fine will serve notice that infractions, however unintentional, will not be tolerated in the state of New Jersey and that junket representatives will be held strictly accountable for their actions. I am persuaded that a fine rather than denial of licensure is proper in this case since it appears to be an isolated incident rather than a pattern. In all other respects, petitioner has complied with all the rules and regulations promulgated by the Casino Control Commission after being advised of same.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty, integrity and business ability, pursuant to N.J.S.A. 5:12-89b(2) and (3).

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Alfred A. Tomaselli, Jr. for a casino employee license, permitting him to act as a junket representative, be **GRANTED.**

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8-26-85
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8/28/85
DATE

Bernadette P. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

August 29, 1985
DATE

Ronald J. Parker/ks
OFFICE OF ADMINISTRATIVE LAW

ml/E

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DOCUMENTS IN EVIDENCE

For the petitioner:

P-1 Letter from Detective Robert R. Grant, Sr., Lawrence, Massachusetts, Police Dept., dated July 8, 1985

P-2 Letter from Lawrence, Massachusetts, Alderman Raymond H. Johnson, dated August 2, 1985

For the respondent:

None

WITNESSES

For the petitioner:

David Descoteaux
Joel Strumph
Alfred A. Tomaselli, Jr.

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EL-42
OAL DOCKET NO. CCC 8263-84

EXCLUSION OF ALFRED J. TOTORO

FROM CASINO HOTEL FACILITIES

FINAL ORDER DENYING PETITION FOR PLACEMENT ON THE EXCLUSION LIST

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) recommending that the petition for exclusion be granted having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions; and it appearing that the respondent's name was previously placed upon the Commission's exclusion list by preliminary order dated October 30, 1984; and the Commission having considered the entire record of these proceedings at its public meeting of May 15, 1985,

IT IS on this 31st day of JULY 1985, ORDERED that the initial decision is rejected based upon the Commission's finding that the documentary evidence upon which the ALJ based his recommendation, although admissible hearsay pursuant to N.J.S.A. 5:12-107(a)(6), was not sufficiently reliable to warrant a finding that the respondent should be excluded from casino hotel facilities pursuant to N.J.S.A. 5:12-71(a) and N.J.A.C. 19:48-1.3(a), and

IT IS FURTHER ORDERED that, in view of the above finding, the order of October 30, 1984, is vacated and the petition for exclusion of Alfred J. Totoro is dismissed; and

IT IS FURTHER ORDERED that the name of Alfred J. Totoro be removed from the exclusion list; and

IT IS FURTHER ORDERED that copies of this final order be served upon Alfred J. Totoro, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8263-84

AGENCY DKT. NO. 84-EL-42

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

ALFRED JOSEPH TOTORO,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Paul Vagianos, Deputy Attorney General, at the Prehearing Conference) (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Mark E. Roddy, Esq., for respondent (Harry A. Goldenberg, Esq., at the Prehearing Conference) (Goldenberg, Mackler & Sayegh, P.C., attorneys)

Record Closed: February 15, 1985 Decided: April 1, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, seeks to have the name of Alfred Joseph Totoro, respondent, placed upon the Casino Control Commission's (Commission) list of persons who are to be excluded or ejected from any licensed casino hotel, pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq., based upon allegations that the respondent is a career criminal

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offender, that he has been convicted of a criminal offense which is punishable by more than six months in prison, and that the respondent's presence in a licensed casino would be inimical to the state or of licensed gaming. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its petition with the Commission on September 10, 1984. The petition also sought the immediate placement upon the exclusion list. By letter from the Commission dated September 17, 1984, the respondent was advised that the Commission would conduct a preliminary hearing. By Order dated October 30, 1984, the respondent's name was placed upon the exclusion list pending final disposition of this matter. By letter filed on November 5, 1984, the respondent requested a hearing. On November 13, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 19, 1984. The matter was heard and the record closed on February 15, 1985.

FINDINGS OF FACT

Mr. Totoro is currently 23 years of age. He was formerly licensed by the Commission as a casino employee and was employed within the casino industry as a craps dealer. The respondent is currently employed by a sub shop as a sandwich man in Ventnor, and he works six days per week.

On March 1, 1982, Mr. Totoro was arrested by the Pleasantville Police Department as a result of his involvement in a one-vehicle accident in which he was the driver, and he was charged with violations of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, N.J.S.A. 24:21-19a(1), possession of marijuana with intent to distribute, and N.J.S.A. 24:21-19a(2), possession of a counterfeit controlled dangerous substance with intent to distribute (P-1). On the date of his arrest, the respondent made a voluntary statement to the police, in which he admitted having purchased four ounces of marijuana and quaaludes all for his personal use with the exception of two ounces of marijuana which he was to deliver to another person. On May 11, 1982, the respondent was indicted by an Atlantic County Grand Jury, and was charged with violations of N.J.S.A. 24:21-20a(4), three counts of possession of a controlled dangerous substance, and

of N.J.S.A. 24:21-19a(1), three counts of possession of a controlled dangerous substance with intent to distribute (P-2). The respondent was admitted into the Pretrial Intervention Program, which he successfully completed. Accordingly, on December 17, 1982, the charges were dismissed.

On January 23, 1983, the respondent was arrested by officers of the Casino Investigation Bureau of the New Jersey State Police at Harrah's Marina Casino/Hotel (Harrah's) and was charged with violations of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, N.J.S.A. 2C:37-3, possession of lottery slips, and N.J.S.A. 2C:37-2, promoting illegal gambling (P-3). At the time of his arrest, the respondent was employed by Harrah's as a craps dealer. On August 26, 1983, and as the result of a plea bargain agreement, the respondent pled guilty to a violation of N.J.S.A. 2C:37-3, possession of gaming records. The respondent was sentenced to one-year probation, one day in jail and was fined $350. Also, as a condition of probation, the respondent was not to enter any casino-hotels. The remaining charges were dismissed. The respondent successfully completed his sentence.

On April 13, 1983, the respondent was arrested by officers of the Casino Investigation Bureau of the New Jersey State Police and was charged with violations of N.J.S.A. 24:21-20a(4), possession of marijuana over 25 grams, N.J.S.A. 24:21-19a(1), possession of marijuana with intent to distribute, N.J.S.A. 24:21-46, possession of drug paraphernalia, and N.J.S.A. 2C:18-3.1, criminal trespass, while he was at Harrah's. The first count was amended to a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams, and the second count was dismissed. On June 15, 1983, the respondent pled guilty to the remaining counts in the Atlantic City Municipal Court and was fined $150 plus $25 costs (P-4).

On May 29, 1983, the respondent successfully completed a 22-day drug rehabilitation program at Carrier Clinic. During the program, he was instructed never again to use any drug or narcotic substance.

On November 29, 1983, the respondent was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (P-5). On February 14, 1984, the respondent appeared in the Atlantic City Municipal Court and pled not guilty. The charges were dismissed.

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On February 29, 1984, the respondent was arrested by the Margate City Police Department and was charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams (P-6). Although the details were not available, the outcome of the proceedings was favorable to the respondent.

Mr. Totoro conceded that he had previously had a problem with use of marijuana; however, as a result of attending a drug rehabilitation program at Carrier Clinic, he no longer has a problem. Also, the respondent has attended Narcotics Anonymous meetings, although he has attended none within the past year. Nevertheless, the respondent conceded that he has occasionally used marijuana on a recreational basis since he completed the rehabilitation program at Carrier Clinic. However, the respondent contended that he was not an addict and could "take it or leave it." In addition, the respondent testified that he has no current drug problem because he is out of the casinos and associates with different persons.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

Section 71 of the Act mandates that the Commission provide by regulation for the institution of a list of persons who are to be excluded from any licensed casino establishment. This section also sets forth certain classifications of persons, based upon their criminal activities or unsavory public image, who should be considered for possible exclusion. The Commission promulgated a series of regulations which were designed to implement the statute. N.J.A.C. 19:48-1.1 et seq. In pertinent part, N.J.A.C. 19:48-1.3 provides:

> (a) The exclusion list may include any person:
>
> 1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
>
> . . . .

3. Who has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

When the Division proposes to have a person's name placed on the exclusion list it has the burden of establishing, by the preponderance of the credible evidence, the reasons for such placement. The Division alleged that the respondent's name should be included on the exclusion list, pursuant to N.J.A.C. 19:48-1.3(a)1, 3 and 4.

A career or professional offender is defined in N.J.A.C. 19:48-1.1 as follows:

> Any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state.

Further, "occupational manner or context," as referred to at N.J.A.C. 19:48-1.1, means "the systematic planning, administration, management or execution of an activity for financial gain." Although the parties dispute what proofs are required to satisfy the regulations, it is abundantly evident that, regardless of whether there is a conviction for such misconduct, there must be sufficient credible evidence of the commission of more than one unlawful act which establishes that a person relies upon his misconduct as a means of self support.

The Division offered no evidence that the respondent was ever involved in any criminal misconduct in an "occupational manner or context," or that he is currently involved in any criminal misconduct.

I **CONCLUDE** that the Division failed to establish, by the preponderance of the credible evidence, that the respondent is a career criminal offender, pursuant to N.J.A.C. 19:48-1.3(a)1.

Although the Division raised N.J.A.C. 19:48-1.3(a)3, it was evident that the respondent has not been convicted of a criminal offense which is punishable by more than six months in prison. Therefore, I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, the elements of N.J.A.C. 19:48-1.3(a)3.

The inimicality of the presence of a person in a licensed casino establishment is defined in N.J.A.C. 19:48-1.1 as:

> "Inimical to the interest of the State of New Jersey or of licensed gaming" means adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act.

In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether a person's conduct is inimical to the policies of the Act. Although this opinion dealt with licensing criterion, it is properly applicable in exclusion list cases. The Commission states at 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate what participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereto, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public

> "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

Legalized casino gaming in New Jersey has been decreed a highly sensitive industry and, as such, it is subject to the most pervasive and stringent regulation. In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. Margate, 86 N.J. 374, 380-381, 392 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325, 328, app. dism., 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), aff'd as modified, 90 N.J. 361, app. dism., 103 S. Ct. 562 (1982). The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate at 381:

> At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations," N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. Because of the need for integrity, public confidence and trust, it was stressed that not only persons with criminal backgrounds and associations but also persons deficient in business probity" should be excluded from casino gaming operations. N.J.S.A. 5:12-1(b)(7).

Further, it has been recognized that one of the primary goals of this Act was "to guard against any danger of infiltration by organized crime." In re Boardwalk Regency Casino License Application at 340.

The Division did not present any proofs of the "public confidence and trust," concerning the gaming industry in New Jersey, let alone with regard to the respondent. However, it must be determined whether the public would be reasonably justified, based upon the totality of the information presented herein, in perceiving that casino gaming operations and the strict regulation thereof would be threatened by the presence of the respondent in a licensed casino. Given that the respondent would be a patron as opposed to a licensed employee, the standard of inimicality is less restrictive.

The evidence is that (1) on March 1, 1982, the respondent was in possession of marijuana, (2) on January 23, 1983, the respondent was in possession of lottery slips in Harrah's and while on duty as a licensed casino employee, and (3) on April 13, 1983, the respondent was in possession of marijuana and drug paraphernalia while in Harrah's as a patron. Further, the respondent lost his employment and license to work in the casino industry as a result of his criminal misconduct. In addition, in May 1983 the respondent successfully completed a drug rehabilitation program. Nevertheless, he has continued to use marijuana on a recreational basis in knowing violation of the law and in contravention of the guidance provided by the drug rehabilitation program. The evidence indicates that the respondent has committed gambling and drug offenses while licensed and in a casino facility. Clearly, and aside from the basic illegality of such conduct, these offenses are inimical. However, the fact that the respondent continues to use illegal substances, regardless of the frequency, especially in view of his prior record, establishes unequivocally that his misconduct has continued to the present and, therefore, that his presence in a licensed casino establishment would be inimical to the interests of the State and of licensed gaming.

I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that Mr. Totoro's presence in a licensed casino establishment would be inimical to the interests of the State or of licensed gaming therein, pursuant to N.J.A.C. 19:48-1.3(a)4.

DISPOSITION

It is **ORDERED** that the name of Alfred Joseph Totoro be placed upon the Casino Control Commission's list of persons who are to be excluded or rejected from any licensed casino hotel.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 1, 1985
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

April 1, 1985
DATE

Bernadette T. Fuqua
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 03 1985
DATE

Ronald L. Rickey/phb
OFFICE OF ADMINISTRATIVE LAW

ml/E

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WITNESS LIST

For the petitioner:

None

For the respondent:

Alfred Joseph Totoro

EXHIBITS ADMITTED INTO EVIDENCE

P-1 Pleasantville Police Department - Arrest Report, prepared by Patrolman Jim Vaughn, March 1, 1982 (3 pages); Drinking-Driving Report, March 1, 1982 (2 pages); New Jersey State Police Accident Report, March 1, 1982 (2 pages); Statement of Accident by Alfred J. Totoro, March 1, 1982; State of New Jersey, Division of Motor Vehicles - Abstract of Driving Record, Alfred Joseph Totoro, March 8, 1982 (2 pages); Municipal Court, City of Pleasantville, Atlantic County - Complaint, Nos. 26610 and 28623, March 1, 1982; Voluntary Statement of Alfred J. Totoro, March 1, 1982; Request for Examination of Evidence prepared by the Pleasantville Police Department, March 1, 1982; and State of New Jersey v. Alfred J. Totoro, Pleasantville Municipal Court, Docket No. C-17665, C-17666 and C-17667, Complaint, March 1, 1982.

P-2 State of New Jersey v. Alfred J. Totoro, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment No. 1121-81-M-A, filed May 11, 1982; Disposition of Indictment, May 11, 1982; Order of Dismissal under Rule 3:28, December 17, 1982 (11 pages).

P-3 New Jersey State Police - Investigation Report, prepared by Detective II D.J. Cope, December 12, 1983 (2 pages); Property Report prepared by D.S.G. A. Kazanowsky, April 26, 1984; State of New Jersey v. Alfred Joseph Totoro, Atlantic City Municipal Court, Docket No. C-1056, C-1054 and C-1055, Complaint, filed on January 23, 1983 (3 pages); Disposition sheets (3 pages)

P-4 New Jersey State Police - Arrest Report, prepared by Detective R. Bunkowski, April 13, 1983; Investigation Report prepared by Detective R. Bunkowski, April 13, 1983 (2 pages); and State of New Jersey v. Alfred Joseph Totoro, Atlantic City Municipal Court, Docket No. C-3379, C-3380 and C-3381, filed on April 13, 1983, together with disposition

P-5 Atlantic City Police Department - Arrest Report, prepared by Officer M. Pincus, January 29, 1983; Investigation Report, November 29, 1983; State of New Jersey v. Alfred J. Totoro, Atlantic City Municipal Court, Docket No. C-11845, filed November 29, 1983, together with disposition

P-6 Margate City Police Department - Arrest Report, prepared by Patrolman Michael J. Fox, February 20, 1984; Investigation Report prepared by Patrolman William F. Fritz, February 20, 1984 (2 pages); Request for Examination of Evidence submitted by Patrolman William F. Fritz; New Jersey State Police Special and Technical Services Section (6 Science Bureau - Laboratory Report, prepared by Lois C. Edicious, April 23, 1984); Police Identification Record of Alfred Joseph Totoro, No. 0717; State of New Jersey v. Alfred Joseph Totoro, Atlantic City Municipal Court, Docket No. C-8121, Complaint, filed February 20, 1984

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-167
OAL DOCKET NO. CCC 03186-85
REGISTRATION NO. 52379-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	FINAL ORDER
v.		
DAVID TRESS,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of October 2, 1985,

IT IS on this 15th day of October 1985, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon David Tress, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3186-85

AGENCY DKT. NO. 85-167

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,
Petitioner,

v.

DAVID TRESS,
Respondent.

Frances Sundheim, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

David Tress, respondent, pro se

Record Closed: August 9, 1985 Decided: August 21, 1985

BEFORE **STEPHEN W. THOMPSON**, ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law & Public Safety, petitioner, against David Tress, respondent, for which the Division seeks revocation of the respondent's Casino Hotel Employee Registration, No. 52379-40, pursuant to section 129 of the Casino Control Act (Act). The respondent asserts rehabilitation pursuant to section 91d of the Act.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission. By letter dated May 14, 1985, the respondent requested a hearing. On May 23, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 11, 1985. The matter was heard on August 9, 1985 at the Pleasantville Municipal Building, Pleasantville, New Jersey.

FINDINGS OF FACT

Mr. Tress is 25 years of age and has lived in the Cumberland/Atlantic County area for his entire life. He currently resides in Scullville and is employed as a cook in the Trump Casino Hotel.

On October 19, 1982, the respondent was arrested after voluntarily presenting himself at the Ventnor City Police Department. The respondent was charged by Mr. George Yokem, owner of Perfetti's Liquor Store, with a violation of N.J.S.A. 2C:20-3, theft by unlawful taking. At that time, Mr. Tress was employed by Perfetti's Liquor Store as a clerk. According to Mr. Yokem, he observed respondent placing a carton in an automobile parked behind the liquor store. Upon investigation, it was determined that the carton contained cigarettes and other merchandise from the store. Mr. Tress confessed to having taken money and goods from the store during the previous nine month period. After being charged, respondent was released on his own recognizance.

On March 8, 1983, the respondent was indicted by the Atlantic County Grand Jury and charged with one count of unlawfully taking "certain movable property, to wit: certain goods and chattels valued at more than Five Hundred Dollars ($500.00). . ." (P-1).

On March 21, 1983, the respondent entered a plea a not guilty to the charge.

On April 7, 1983, the respondent retracted his plea of not guilty and entered a plea of guilty to the indictment.

On April 22, 1985, the respondent was sentenced to an 18 month period of probation and fined the sum of $250 and $25 for the Violent Crimes Compensation Board. The Honorable Manuel H. Greenberg, J.S.C. stated under reasons for sentence: "the information in the presentence report led to the conclusion that some period of incarceration was appropriate in this case. However, the prosecutor has been advised of certain problems of proof with respect to the sum wrongfully taken by defendant. Accordingly, the recommendation of the state will be followed." (P-1).

After being fired from the liquor store, respondent secured employment at the Ram's Head Inn, Absecon, New Jersey in October 1982 as a maintenance worker. Eventually, he was promoted to pantry person, a position he held until April 1984.

In April 1984, respondent was offered a job at the Trump Casino Hotel as a pantry garde Manger starting at $5.38 an hour. As such, respondent was responsible for the preparation of cold foods used in banquets and in the cafeteria. Recently, respondent was promoted and transferred to the main kitchen as a cook responsible for vegetable preparation.

Respondent obtained early release from probation in October 1984, in order to vote in the general election.

Respondent has readily admitted his culpability and expressed deep remorse for his past conduct. He explained that at the time of the theft from Perfetti's Liquor, he was having difficulties in meeting his financial obligations. Respondent indicated that the liquor store incidents were isolated behavior that would never be repeated again. Respondent explained that he is very happy in his work and that his various promotions confirm his efforts at rehabilitation.

Respondent's roommate, Robert Bygel, stated that Mr. Tress' personality has changed for the better since the incident at the liquor store. He contends that respondent has become more outspoken and willing to stand up for what he believes in rather than take a lot of abuse like he did in the past. Mr. Bygel has lent respondent various sums of monies over the years and that money has always been repaid. Mr. Tress takes responsibility for his share of the household expenses and makes sure creditors, like the Book-of-the-Month Club, are notified if a payment is to be made late.

Ms. Delphine Rizzo met Mr. Tress at the Trump Casino Hotel where they were co-workers. She knows respondent as a loyal and honest person. When Ms. Rizzo is out of town, Mr. Tress is given the keys to her apartment in order to water the plants. Ms. Rizzo stated that her apartment contains expensive stereo equipment, a color T.V. and approximately $200 cash. Nothing has ever been missing from the apartment. Ms. Rizzo expressed disbelief and shock upon learning of Mr. Tress' previous legal difficulties. Respondent, to this day, remains a trustworthy friend.

Mr. John E. Davis testified that he was Mr. Tress' immediate supervisor two days a week and second in charge on the other three days until September 1984. He emphatically stated that respondent was a terrific employee and that respondent was usually the first to arrive and dress for the 11:00 p.m. to 7:00 a.m. shift. Mr. Tress displayed initiative and a willingness to learn difficult tasks. When Mr. Davis was approached by Trump Castle Casino Hotel with a better job offer, he attempted to hire Mr. Tress since he knew that Mr. Tress was an honest, hard worker that would "make my job a lot easier." Trump Casino Hotel responded with a counter-offer in order to keep Mr. Tress' services. Mr. Tress currently receives $9.41 an hour as a cook.

In addition, respondent presented letters from two supervisors at the Trump Casino Hotel which are incorporated within the body of this decision (R-1 and R-2).

All the preceeding evidence is undisputed and believable and is thus FOUND AS FACT.

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-86c(1)

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's conviction constitutes a statutory disqualifier listed under 86c(1) of the Act (P-1).

There is no doubt that respondent's conviction for violation of N.J.S.A. 2C:20-3, third degree, theft by unlawful taking is a statutory disqualifying offense under section 86c(1) of the Act.

I **CONCLUDE** that the Division has established, by a preponderence of the credible evidence, that the respondent's conviction for violation of N.J.S.A. 2C:20-3, third degree, disqualifies him from being a registrant, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-91d

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation (N.J.S.A. 5:12-91d). This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs or the recommendation of persons who have the applicant under their supervision.

First, Mr. Tress is registered as a hotel employee and is currently employed as a cook by Trump Casino Hotel. As such, he has no responsibilities for actual gaming activities and has limited contact with patrons of the casino.

Second, the respondent was convicted of one charge:

(1) On April 7, 1983, a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, third degree. Under section 86c(1) of the Act, the theft by unlawful taking, third degree is a statutory disqualifier. The apparent 9-month pattern of misconduct is disturbing. However, respondent's behavior prior to and since the conviction has been exemplary.

Third, the respondent stated that he was suffering financial difficulties in meeting his household expenses. However, the respondent's personal problems were not as serious as to overcome his misconduct, and they do not logically lead to the commission of crimes. While respondent's explanations do not mitigate his misconduct to any significant degree, in light of Mr. Tress' remorse and shame over the incident, the rehabilitative effect has been profound.

Fourth, the respondent committed the offenses between March 1982 and October 1982, a period of approximately nine months. The last incident occurred almost three years ago. Respondent's period of probation expired 10 months ago.

Fifth, the respondent committed the offenses at age 23. It is possible that his misconduct was, in part, due to immaturity.

Sixth, the respondent's misconduct involved the commission of a number of incidents over a nine-month period. However, his rehabilitative efforts commenced even prior to sentencing. And it appears that the thefts from the liquor store are an isolated incident.

Seventh, there were no social conditions which contributed to the offense.

Eighth, respondent has demonstrated extraordinary rehabilitation. He admitted his misconduct and pled guilty to the charge. Furthermore, he satisfactorily completed the requirements of his probation and, in fact, was released early from the requirements of probation. He has been employed steadily since October 1982. First at the Ram's Head Inn and more recently at the Trump Casino Hotel. His friends, co-workers and supervisor speak highly of respondent's ability, honesty and integrity. In addition, the respondent has established a very positive work record.

I am persuaded that the respondent has met his statutory burden to establish his rehabilitation. Respondent has acknowledged his misconduct and responsibility for his actions. It is clear that respondent has a complete commitment to a total abstinence from misconduct.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division to revoke Casino Hotel Employee Registration No. 52379-40 of David Tress be **DENIED** and **DISMISSED WITH PREJUDICE.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5-21-85
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

August 22, 1985
DATE

Bernadette T. Fuqua
CASINO CONTROL COMMISSION

Mailed to Parties:

August 26, 1985
DATE

Ronald L. Parker/ks.
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

P-1 Superior Court, Atlantic County Indictment

R-1 Letter from Glenn Farqueharsen, Assistant Chef, Trump Casino Hotel

R-2 Letter from LeRoy Zaller, Trump Casino Hotel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-220
REGISTRATION NO. 25762-40
OAL DOCKET NO. CCC 1066-85

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT

Complainant,

v.

RODNEY J. TOWNS

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 31, 1985;

IT IS on this 1ST day of AUGUST 1985, ORDERED that the initial decision is modified as follows:

(1) The respondent is disqualified from casino hotel employee registration pursuant to N.J.S.A. 5:12-86(c) solely on the basis of his 1984 convictions for distribution of controlled dangerous substances (CDS) in violation of N.J.S.A. 24:21-19(a)(1); and

(2) In light of the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c)(3), the Commission need not reach the issue of whether his 1983 conviction for theft by receiving stolen property in violation of N.J.S.A. 2C:20-7 is a statutory

disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1); and

(3) In light of the respondent's disqualification pursuant to N.J.S.A. 5:12-86(c)(3), that portion of the initial decision finding that the respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(4) is rejected as unnecessary.

IT IS FURTHER ORDERED that the casino hotel employee registration of Rodney J. Towns is revoked based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Rodney J. Towns is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Rodney J. Towns, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1066-85
(CCC 5777-84 On Remand)
AGENCY DKT. NO. 83-220

STATE OF NEW JERSEY
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RODNEY J. TOWNS,
Respondent.

William Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Rodney J. Towns, pro se

Record Closed: May 6, 1985 Decided: June 19, 1985

BEFORE **JEFF S. MASIN**, ALJ:

The Division of Gaming Enforcement (Division) seeks an order from the Casino Control Commission (Commission) revoking the registration of Rodney J. Towns as a casino hotel employee registrant. Mr. Towns requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 15:14F-1 et seq. A prehearing conference was held on March 27, 1985, and a prehearing order was issued on April 8, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin on May 6, 1985, at the Pleasantville City Hall.

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ISSUES

The prehearing order establishes the issues for consideration. The Division contends in its complaint that Mr. Towns' various arrests and convictions demonstrate that his continued registration would be inimical to the policies of the Casino Control Act and casino operations in the State of New Jersey, thus requiring revocation of registration pursuant to N.J.S.A. 5:12-86(d). In addition, the Division argues that Towns has been convicted of offenses which are per se disqualifying offenses under N.J.S.A. 5:12-86(c)(1).

As an additional issue, the prehearing order includes whether the respondent has rehabilitated himself from the adverse affects of any criminal conduct which would constitute a disqualifying offense, thus allowing him to continue to be registered, pursuant to N.J.S.A. 5:12-91 (d).

THE EVIDENCE

The Division offered in evidence at the hearing a series of police reports and other documentation, including certified copies of criminal records, with respect to various arrests and convictions incurred by Mr. Towns. As to each, this decision will set forth the circumstances as revealed by the police reports and Towns' testimony concerning each incident.

The first arrest occurred on August 17, 1982, when Towns, along with two other men, entered a store in Bally's Hotel/Casino. The police report notes that one of the men was observed by an employee leaving the store with a pocket book stuffed under his shirt. The men were apprehended and no pocket book was found. Towns was charged with a violation of N.J.S.A. 2C:20-3, theft, but the charge was dismissed for lack of prosecution. In this hearing, Towns related the facts concerning his arrest, but did not admit any wrongdoing.

On September 5, 1982, Towns was arrested on a charge that he had shoplifted shirts from a store on the Atlantic City Boardwalk. He was accompanied at the time by one of the men who was arrested with him in the Bally's incident previously mentioned, Kevin Hickerson. The thirty-five shirts which Towns and Hickerson attempted to steal were valued at $226.00. Although the Division represented at the hearing that this charge

was dismissed, a fact confirmed by Towns, he admitted that he was guilty. He noted that at the time of the incident he was using drugs very heavily and was undergoing family changes.

The next arrest occurred on November 22, 1982, when Towns and Hickerson were observed by a police officer entering a 7-11 store in Atlantic City with an empty bag in Hickerson's hand. When they exited the men were stopped and two bottles of coffee were found inside Towns' coat. Hickerson had three pairs of gloves in the bag. Upon reentering the store, the officer confirmed that the men had not paid for these items. They were charged with shoplifting in violation of N.J.S.A. 2C:20-11, the value of the items taken being $18.45. Although the Division had no information about the disposition, Towns indicated that he plead guilty. Again he noted that he was using drugs at the time and was "living in the streets and was doing certain things to survive, to eat... take care of my habit."

On December 4, 1982, Towns was charged with shoplifting and a search incident to the arrest revealed that he had a plastic syringe and a needle in his coat pocket. He was charged with possession of narcotics paraphernalia, a violation of N.J.S.A. 24:21-47. He was found guilty of this charge and sentenced to 21 days in the county jail and given credit for 6 days served. He was also placed on one-year probation, which was apparently suspended. During the present hearing, Towns admitted that he was guilty of the offense and noted that he then had a $300.00 a day narcotics habit.

On February 1, 1983, Towns was charged with simple assault in violation of N.J.S.A. 2C:12-1(a)(1). The police report states that the complainant, one Kevin Hogans, told the police officers that he was walking on North Carolina Avenue in Atlantic City when he was stopped by Towns and another individual, Smith. They told him that he had "sold them something bad." At this point Towns opened a car trunk and the other man picked up a lug wrench and assaulted Hogans around the head and body, causing him to be taken to the hospital. The case was dismissed. Mr. Towns testified that indeed Hogans had sold some purported drugs to Smith which had proven to be "bad." Smith assaulted Hogans and Towns was only trying to break up the fight. He knew Hogans and had had a problem with him concerning a girl. However, Hogans is really a friend of his and has been very good to Towns' five children. The whole incident was drug-related.

Towns was arrested on March 22, 1983, by police officers in Somers Point. He was charged with theft of three stereo radio/cassette recorders from Jamesway Department Store with a value of $499.97 and was also charged with receiving stolen property in violation in N.J.S.A. 2C:20-7. As a result of this arrest Towns and his companion were indicted for theft by unlawful taking and theft by receiving stolen property. On June 27, 1983, Towns entered a plea of guilty to the receiving stolen property charge. Although the testimony of Towns and the representations of the Deputy Attorney General as to the sentence on this matter were not completely clear, the court record introduced into evidence indicates that Towns was sentenced to a nine month term to run consecutive to time he was then serving. It is unclear exactly what sentence he was then serving.

Towns was indicted by the Atlantic County Grand Jury on April 3, 1984, and April 26, 1984, on charges of possession on controlled dangerous substance, possession with intent to distribute, conspiracy to distribute controlled dangerous substance, possession of controlled dangerous substance and distribution of a controlled dangerous substance. On September 24, 1984, as part of a plea bargain, he plead guilty to possession with intent to distribute on Indictment 453-4-84-B charging him with possession with intent to distribute marijuana on March 8, 1984, in violation of N.J.S.A. 24:21-19(a)(1). He also entered a plea of guilty to distribution of a controlled dangerous substance, heroin, on March 1, 1984, a violation of N.J.S.A. 24:21-19(a)(1). As a result of his pleas to these offenses he was given an 18 month probation term and sentenced to 150 days in the Atlantic County jail on the plea to distribution, which sentence was to run consecutive to a sentence then being served, and an additional 150 days on the plea to possession with intent to distribute marijuana, which sentence was to run concurrent with the distribution sentence.

Rodney J. Towns testified that he is 24 years old and lives in Atlantic City with his mother, brother and five children. Although he is not married to the mother of these five children he is in a relationship with her and supports the children as much as possible. He works sporadically for the Laborers International Union, Local 415, setting up conventions.

Mr. Towns testified, as noted above, that he had been heavily involved in drugs up through and including the time of his arrests for possession and distribution in April 1984. He last used drugs in the summer of 1984 and after being released from jail he has

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only drank beer "now and then" and has not used drugs. He has not been involved in any formal rehabilitation programs. He stated that in the past he had had many hang-ups and worries and had been going through a "stage" during which he used drugs. He was a substance abuser with an "off and on" habit for four years. He has now changed his attitude and is trying to straighten himself out.

Mr. Towns is presently on probation and will be until April of 1986. He has not been employed in the Casino industry since his employment at Caesars Boardwalk Regency Hotel in 1981. At that time he was suffering from drug problems and his employment lasted only one month. Mr. Towns presented letters in support of his continued registration submitted by William Coleman, Jr., business manager of Local 415, and James Green, Secretary-Treasurer of the Union. Each of these men indicated that Towns was in good standing with the Local and had a reliable and conscientious work record and had been cooperative and an asset to the union.

DISCUSSION

An examination of Mr. Towns criminal record establishes that he has had many brushes with the law over the past several years which are indicative of drug related offenses and consistant with his testimony that he had a heavy drug habit during these years. The shoplifting offenses, the possession and distribution of controlled dangerous substances, and the drug related assault charge all indicate that over the last years Towns has lived an unstable, criminally oriented life. I accept his testimony as to the circumstances which caused him to be involved in these offenses, that is his drug use and his need for money to finance his habit, as well as his need to obtain necessary items which he could not afford because of his lack of employment and heavy drug usage. I observed Mr. Towns to be a seemingly honest, sincere individual who recognizes the causes of his predicament and understands the need to change his ways.

The Division argues that Towns has been convicted of offenses which require his disqualification pursuant to N.J.S.A. 5:12-86(c). Specifically the conviction for theft by receiving stolen property in violation of N.J.S.A. 2C:20-7 is a per se disqualifying offense under section 86(c). In addition, the convictions for distribution of a controlled dangerous substance and possession with intent to distribute are also per se disqualifiers under section 86(c)(3).

I **FIND** that Mr. Towns has been convicted of offenses of a per se disqualifying nature and that therefore he is disqualified from registration and the Commission must therefore revoke his registration unless he has established rehabilitation under section 91(d).

The Division also contends that continued registration of Mr. Towns would be inimical in that it would not be in the best interests of the industry and in conformity with the policies of Act. In respect to this allegation, I **FIND** that Mr. Towns recent history of criminal activity, including his activities in distributing controlled dangerous substances, does indicate that at the present time it would not be consistent with the policies of the Casino Control Act to continue him as a registrant.

With respect to the issue of rehabilitation, there is no specific rehabilitation provision where registration is found to be inimical. However, rehabilitation is permitted for one convicted of per se disqualifying offenses. Here, Mr. Towns is still on probation and will be until April 1986. His significant drug history and the criminal activities arising therefrom over a number of years indicate that it is too soon to make any determination that Mr. Towns has successfully rehabilitated himself. While it is certainly my impression that he is well on the road to achieving this goal, given the past record, it would, in my view, be precipitous to decide that issue in his favor at this time.

I **CONCLUDE** that the respondent has failed to demonstrate by clear and convincing evidence that he has at this time rehabilitated himself. Therefore, I **CONCLUDE** that in light of his convictions for per se disqualifying offenses and because of the nature, duration and circumstances of his activites which indicate that his continued registration would at this time be inimical, that his registration must be revoked. It is so **ORDERED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 19, 1985
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

June 20, 1985
DATE

Bernadette P. Fruge
CASINO CONTROL COMMISSION

Mailed to Parties:

June 26, 1985
DATE

Ronald J. Parker, Jr. /x.s
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Atlantic City Police Department investigation report for incident August 17, 1982 with attached arrest report and Municipal Court complaint WJ25432

P-2 Atlantic City Police Department investigation report, dated September 5, 1982, with attached arrest report

P-3 Atlantic City Police Department investigation report, dated November 22, 1982, two pages with attached arrest report

P-4 Atlantic City Police Department investigation report, dated December 4, 1982, with attached arrest report and Municipal Court

P-5 Atlantic City Police Department investigation reports, dated February 1, 1983, with attached arrest report

P-6 Somers Point Police Department arrest report, dated March 22, 1983, with attached letter of March 22, 1983, Somers Point Municipal Court complaint W14398; Indictment 4-485-83-C, three pages; County Clerk's Certification of Record; Atlantic County Superior Court Criminal Record, dated April 28, 1983, two pages.

P-7 Indictment 590-4-84-A, four pages, with attached Judgement of Conviction and Order for Committment, two pages

P-8 Indictment 453-4-84-B, three pages; Judgement of Conviction Order for Committment, two pages, Sentence Work Sheet, two pages

On behalf of respondent:

R-1 Letter of William Coleman, Jr., dated May 3, 1985

R-2 Letter of May 3, 1985, from James Green

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-182
OAL DOCKET NO. CCC 738-85
REGISTRATION NO. 30814-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	FINAL ORDER
v.		
JEFFREY L. TROXELL,		
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record in this matter at its public meeting of July 10, 1985,

IT IS on this 16TH day of July 1985, ORDERED that the initial decision of the Office of Administrative Law is affirmed; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Jeffrey L. Troxell, the Division of Gaming Enforcement and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 738-85
AGENCY DKT. NO. 83-182

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JEFFREY L. TROXELL,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Charles P. Allen, Jr., Esq., for respondent (Dietrich, Allen & St. John, attorneys)

Record Closed: April 18, 1985 Decided: June 3, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement (Division) filed with the Casino Control Commission on May 31, 1983, seeking judgment revoking the respondent's casino hotel employee registration, or some other appropriate sanction, pursuant to sections 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The issues to be determined in this matter are as follows:

1. Whether the respondent has committed acts constituting an offense specifically identified in the Casino Control Act as a disqualifying offense, or has committed acts constituting offenses which would render

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registration inimical to the policy of the Casino Control Act, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of sections 86c(3) and (4) and 86g of the Act, thereby requiring revocation of registration, or some other appropriate sanction, pursuant to sections 91 and 129 of the Act.

2. Whether the respondent, notwithstanding his commission of an offense which would otherwise disqualify him from continued registration, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d of the Casino Control Act.

PROCEDURAL HISTORY

By order dated June 20, 1983, the Casino Control Commission entered a prehearing suspension of the respondent's casino hotel employee registration. By order of February 5, 1985, the Commission vacated the previously entered suspension and the matter was thereafter transmitted to the Office of Administrative Law on February 9, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 13, 1985, and the hearing was held on April 18, 1985.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 25 year old resident of Ventnor, New Jersey. He presently holds casino hotel employee registration number 30814-40, issued by the Casino Control Commission on August 5, 1981. In April 1985, the respondent was hired in a room service capacity by the Trump Plaza Casino Hotel. No objection has been raised concerning the respondent's business ability, or performance in his present position.

It is undisputed that the respondent was convicted upon a plea of guilty on January 27, 1983, of theft by unlawful taking, in violation of N.J.S.A. 2C:20-2. According to the respondent, he had gone to a junkyard to find a replacement dashboard for his automobile, which had been broken into and damaged. The respondent found a suitable dashboard and, on an impulse which he justified by the break-in and damage which he had

experienced, the respondent left the junkyard without paying. He was pursued by the business owner and his son and the respondent gave himself up.

It was the testimony of the respondent that the business owner's son attempted to provoke a fight and that assault and threat charges were filed on both sides. The respondent subsequently pled guilty to the theft and the assault charges on both sides were dropped. The respondent was fined $100 and ordered to pay costs of $25.

In June 1981, the respondent was hired as a room service waiter at the Claridge Casino Hotel. It is undisputed that on March 6, 1983, the respondent and a fellow employee were taking a meal to a guest when they stopped on the 12th floor to smoke a marijuana cigarette which another guest had given the respondent. According to the respondent, his fellow employee knew that he was a quaalude user, and she asked the respondent if she could have one. The respondent gave her a quaalude, and without asking to be reimbursed, she gave the respondent $4.00.

The smoking of the marijuana cigarette set off a smoke alarm and Claridge security personnel apprehended the two employees. The Division of Gaming Enforcement investigated and discovered that the respondent had sold a fellow employee a quaalude and that he had in his possession a total of 19 quaaludes and a small amount of marijuana. Subsequently, the respondent was charged with distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), and possession of a controlled dangerous substance (marijuana, under 25 grams), in violation of N.J.S.A. 24:21-20a(4). On October 21, 1983, the respondent pled guilty to the charge of unlawful possession of a controlled dangerous substance, and the remaining charges were dismissed (exhibit P-2). The respondent was sentenced to a period of probation of one year and he was required to perform 50 hours of community service.

Testifying on his own behalf, the respondent explained that in 1983 he had moved from his mother's home in Wildwood, New Jersey, to an apartment closer to his employment at the Claridge Casino Hotel. He began to get caught up in the "flashiness" of the casinos and his use of quaaludes increased to approximately five per day. Following his arrest on March 6, 1983, the respondent has not used quaaludes. He candidly acknowledged that he smoked some marijuana to relax his body within a month following his arrest, since he was withdrawing from the quaalude use.

The respondent was indicted in September 1983 and he entered his guilty plea in October 1983. Prior to the entry of his guilty plea, the respondent utilized the services of an Ocean City, New Jersey, drug rehabilitation center, on an out-patient basis. The respondent visited this center twice a month for approximately three months. He also attended meetings of Narcotics Anonymous for approximately four months. The respondent no longer uses controlled dangerous substances, and he believes that his mental health is fine.

Pursuant to his sentencing in November 1983, the respondent performed approximately 20 hours of community service with Sister Grace of Catholic Services. The respondent also performed approximately 70 hours of community service with The Starting Point, a shelter for teenaged runaways and homeless youth in Atlantic City. For the most part, the respondent's efforts at The Starting Point consisted of manual and technical labor, such as putting up walls and installing plumbing. Following his unpaid service, Anita Lokes, Director of The Starting Point, hired the respondent as a child care worker with duties which included overall house supervision, youth supervision and new client intakes (exhibit R-2). According to Ms. Lokes, the respondent handled his responsibilities very well and he was always eager to contribute his skill and knowledge (exhibit R-1).

It was the testimony of the respondent that he was hired by the Trump Plaza Casino Hotel in April 1985, with full disclosure of his involvement in the present proceedings. In fact, his supervisor at Trump was his supervisor at the Claridge Casino Hotel at the time of his arrest in March 1983.

It was the candid and sincere testimony of the respondent that he has matured and changed his attitude concerning what he thought was the "glamorous" casino life. Since he has stopped using quaaludes, he feels he has become another person. The respondent noted that he performed more community service hours than were required by his sentence and that his probation was terminated early (exhibit P-3). The respondent also testified that he was engaged to marry Nancy O'Donnell.

Testifying on behalf of the respondent, Nancy O'Donnell stated that she had known him since 1976 and that the respondent became involved in drug use because of the drug involvement of the people with whom he worked. She stated that the respondent had been free of drug use for some time and that he has changed a lot since he stopped using

drugs. Ms. O'Donnell has been a licensed casino employee for three years and she is employed by the Claridge Casino Hotel.

Also testifying on behalf of the respondent was his mother, Mary Troxell. According to Mrs. Troxell, the respondent has changed since he became engaged. In particular, he is more mature and he has settled down.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 1d(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to sections 91b and 86c of the Casino Control Act, the Commission may revoke, suspend, limit, or otherwise restrict registration of any registrant who has committed or been convicted of acts constituting an offense which would render registration inimical to the policy of the Casino Control Act, or has committed or been convicted of an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey, within the meaning of section 86g of the Act. It is undisputed that the respondent was convicted in January 1983 of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3 (under $200).

It is also undisputed that the respondent possessed and used marijuana on the premises of a casino licensee on March 6, 1983. At the same time, he possessed quaaludes, a controlled dangerous substance, and sold one quaalude to a fellow employee, on the premises of a casino licensee.

The respondent's conviction for theft by unlawful taking concerned property valued under $200. This conduct in November 1982 appears to have been aberrational, and

there is no evidence in the record concerning any further conduct of a similar nature. From the credible evidence in the record, it would appear that this offense by the respondent is not of such nature as to adversely affect the public's confidence in the integrity of the licensed gaming industry and of the regulatory process. Accordingly, I **CONCLUDE** that this offense does not indicate that the respondent's continued licensure would be inimical to the policy of the Casino Control Act and to casino operations.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c, absent rehabilitation, pursuant to section 91d of the Act, or waiver, pursuant to section 91e of the Act, the appropriate sanction is revocation of the credential. See, State v. Wynette Harris, Docket No. 81-19, Commission decision 1983. It is undisputed that the respondent, during his work day as a casino hotel employee, smoked marijuana and sold a controlled dangerous substance on the casino hotel premises. This distribution of a controlled dangerous substance violates N.J.S.A. 24:21-19a(1), an automatic disqualifer from licensure, pursuant to section 86c(3) of the Casino Control Act. Therefore, I **CONCLUDE** that the respondent's commission of the offense of distribution of a controlled dangerous substance permits the revocation of his registration, pursuant to sections 86c and g, 91b and 129 of the Casino Control Act.

Pursuant to section 91d of the Act, the respondent's casino hotel employee registration shall not be revoked on the basis of his commission of an offense enumerated in the Act as disqualification criteria, provided that he has affirmatively demonstated his rehabilitation, with due consideration given to the rehabilitation factors set forth in that section. The respondent was 23 years old at the time of his drug offense in March 1983. He has been drug free for approximately two years and he performed his probation and community service requirements in such a satisfactory manner that his probation was terminated early. He has again obtained employment in a licensed casino hotel, and his present supervisor at the Trump Plaza Hotel was his supervisor at the Claridge Casino Hotel where he worked from 1981 until March 1983.

The respondent has matured since his drug involvement and he received the enthusiastic endorsement of the administrator and director of The Staring Point, where he performed his community service and then became an employee. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, notwithstanding his commission of otherwise disqualifying offenses under sections 86c(3) and (4)

of the Act, has affirmatively demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of registration, or any other sanction, pursuant to sections 91d and 129 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Jeffrey L. Troxell be and hereby is **DISMISSED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 3, 1985
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 4, 1985
DATE

Paula Weiss
CASINO CONTROL COMMISSION

Mailed to Parties:

June 6, 1985
DATE

Ronald M. Parker/ks
OFFICE OF ADMINISTRATIVE LAW

ml

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Criminal complaints and disposition

P-2 New Jersey State Police Investigation and Arrest Report, Complaints and Judgment of Conviction

P-3 Application for Order Granting Termination of Probation

FOR THE RESPONDENT:

R-1 Letter, dated November 16, 1984

R-2 Letter, dated February 28, 1985

R-3 Letter, dated March 11, 1985

WITNESSES

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Jeffrey L. Troxell
Nancy O'Donnell
Mary Troxell

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-441 AND
84-EA-156
APPLICATION NO. 46615-21
REGISTRATION NO. 48219-40
OAL DOCKET NO. CCC 1076-85

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
FRANCIS VECCHIO,	:	FINAL ORDER
Respondent.	:	
AND	:	
APPLICATION OF FRANCIS VECCHIO	:	
FOR A CASINO EMPLOYEE LICENSE	:	

A hearing in these matters having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 16, 1985;

IT IS on this 15th day of November 1985, ORDERED that the initial decision is modified as follows:

> Absent a finding that Francis Vecchio was disqualified from licensure and registration pursuant to N.J.S.A. 5:12-86(c)(1) or (3), there was no need to consider the issue of rehabilitation. Therefore, the ALJ's finding to the effect that, while Francis Vecchio had not committed a disqualifying offense pursuant to section 86(c), he had nevertheless demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-91(d) is rejected as unnecessary.

IT IS FURTHER ORDERED that the application of Francis Vecchio for a casino employee license be denied based upon his failure to demonstrate that he possesses the good character, honesty and integrity required by N.J.S.A. 5:12-89(b)(2) and -90(b) for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the complaint for revocation of the respondent's casino hotel employee registration be dismissed; and

IT IS FURTHER ORDERED that denial of the application for a casino employee license shall not preclude Francis Vecchio from retaining his casino hotel employee registration; and

IT IS FURTHER ORDERED that Francis Vecchio is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8 and the terms of this order; and

IT IS FURTHER ORDERED that copies of this final order be served upon Francis Vecchio, the Division of Gaming Enforcement, the OAL and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. CCC 1076-85

AGENCY DKT NO. 84-411 & 84-EA-156

FRANCIS VECCHIO,

Petitioner,

v.

STATE DIVISION OF GAMING ENFORCEMENT,

Respondent

Francis Vecchio, petitioner, pro se

Frances Sundheim, Deputy Attorney General, for respondent, (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: July 25, 1985 Decided: September 9, 1985

BEFORE **RALPH J. TOLOMEO**, ALJ:

On May 9, 1983, the Casino Control Commission received respondent's application for a casino employee license. By letter dated August 21, 1984, the Division of Gaming Enforcement objected to respondent's licensure pursuant to N.J.S.A. 5:12-1 et seq. On December 4, 1984, the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking to revoke respondent's registration, DGE48219-40, as a casino hotel employee. Respondent requested a hearing with respect to both matters and, on February 27, 1985, the matters were transmitted to the Office of Administrative Law as contested cases, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference

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was scheduled for April 4, 1985, at which time the parties appeared. At the prehearing conference, a Motion to Consolidate both pending matters (licensure denial and registration revocation) was granted. The consolidated case was scheduled for hearing on July 25, 1985, and the same conducted at the Pleasantville Municipal Complex, Pleasantville, New Jersey. On that date, the hearing concluded and the record closed.

The basic facts in this matter are not disputed. Respondent called Officer Richard Livingston of the Monroe Township, New Jersey Police Department. His testimony at the hearing involved two incidents in which he had personal knowledge of petitioner's conduct. The witness personally participated in a police investigation of those matters. The first incident occurred on July 6, 1980, when he was dispatched to the Black Horse Pike Campground located in Monroe Township. When he arrived, he was met by the campground manager who advised that Frank Vecchio was in a trailer in the campground and had stabbed a John DeRenzo. Mr. DeRenzo was given first aid by Officer Livingston. Officer Livingston then went to the trailer indicated and heard yelling and screaming from within. He observed that the trailer was "destroyed". There was a television set out on the front lawn, the windows were broken out of the trailer and the screen doors ripped. Officer Livingston ascertained that Francis Vecchio was in the back bedroom and tried to speak with him to calm him down. Vecchio was distraught and yelling obscenities. He then advised Vecchio that he was under arrest and Vecchio refused to come out of the bedroom of the trailer. Officer Livingston was aware that DeRenzo had been injured and believed he saw something through a crack in the door which he believed to be a weapon. Rather than using force, he continued to talk to Vecchio when a fellow officer who was outside the trailer was able to enter the bedroom. Officer Livingston then entered the bedroom and physically placed Vecchio under arrest. He was found to have a pipe wrench in his hand and the officer also found a 10 inch serrated knife with blood in the trailer which was identified by DeRenzo as the weapon used by Vecchio.

As a result of this investigation, the matter was presented to the Gloucester County Grand Jury who, on October 16, 1980 returned an indictment in two counts against Frank Vecchio charging him with damage to the trailer of Maryann Milalick in excess of $2,000, contrary to the provisions of N.J.S.A. 2C:17-3 and with purposely and knowingly causing bodily injury by cutting the neck of John DeRenzo with a deadly weapon contrary to N.J.S.A. 2C:12-1(b)(2). The court record discloses that on November 7, 1980, Francis Vecchio entered pleas of not guilty to the charges and subsequently on January 5, 1983,

entered pleas of guilty to disorderly persons offenses at which time the indictable charges were dismissed by the court. Vecchio was sentenced to two years probation, $500 restitution within 30 days and the balance at $75 per month over the term of his probation as to the disorderly offense of assault and two years probation to run concurrently with the previous charge and $1500 restitution for the damage to the trailer.

Officer Livingston further testified that on December 27, 1981, he responded to a report that a 1967 Ford Mustang was on the opposite side of a roadway and on the front lawn of a residential property in Monroe Township. Upon arriving at this location, no one was at the scene. A Motor Vehicle lookup indicated that the vehicle was registered to a Daniel Vecchio (petitioner's brother) and Officer Livingston went to the Vecchio residence approximately one mile away to ascertain information but no one was at the residence. He returned to the Mustang location and ordered a tow truck to remove the same. When the tow truck arrived, Vecchio was observed walking down the roadway and appeared intoxicated. Vecchio stated to the officer that he was "fucked up." At that time, the officer advised that an accident report would be prepared and the tow truck would remove the car from the location and it would be impounded. He then observed Vecchio attempt to impede the tow truck operator from removing the vehicle. The officers had to physically remove Vecchio, who became physical by shoving and kicking. The officer then advised Vecchio that he was under arrest and the testifying officer and a fellow officer were assaulted by Vecchio, who also used profanity. Vecchio was then placed in a patrol car and handcuffed. Vecchio attempted to get out of the police vehicle. At that time, Vecchio's brother, Daniel, appeared but was told to leave by the officers at which time an argument between Daniel and the officers occurred, resulting in the arrest of Daniel Vecchio. At that time, Francis Vecchio kicked out the window of the patrol car and had legcuffs applied to confine and constrain him and his hands were cuffed behind his back.

Officer Livingston testified that at the times of the occurrences involving Francis Vecchio, Vecchio was under the influence of alcohol.

Francis Vecchio testified on his own behalf. He stated that he was employed at the time of the DeRenzo incident of July 6, 1980 and living with John DeRenzo in a trailer at the trailer park location. The trailer was owned by relatives of DeRenzo and DeRenzo was not employed. Vecchio stated that he was paying to keep both of them and

whenever he left cigarettes or change in the trailer, the same would disappear. He stated he became angry about that and it built up inside. On the date in question, July 6, 1980, he was at a friend's house drinking and heard that DeRenzo was trying to injure his dog kept at the trailer. He went to the trailer and, when DeRenzo was not found there, he began destroying things. At that time, DeRenzo came to the trailer and had something in his hand. Vecchio said he grabbed for the knife to defend himself and they wrestled to the floor. Vecchio believed that DeRenzo was cut accidentally from the knife in his hand at which time DeRenzo jumped up and ran out of the trailer. It was at that time that Vecchio realized that DeRenzo was injured. As to the incident with the police officers on December 27, 1981, Vecchio testified that he had purchased the Mustang automobile and had rebuilt it from junk. He further testified that he had left a party at which he had been drinking heavily and enroute home, he lost control of the vehicle, which skidded and went up on a concrete barrier on the front lawn of the residence described. He testified that he tried to wake up the people in the house and, being unsuccessful, went to the nearest house available and called the police. He was told that the police had already arrived at the scene and to go back to the location of the vehicle, which he did. Upon his arrival, he became concerned about how his vehicle would be towed and the damage that would be done to it if it was not towed properly. Vecchio further testified that the manner in which the tow truck operator hooked up to his vehicle would damage his vehicle. At that time, he requested to move his vehicle without the intervention of the tow truck operator. He testified that the tow truck operator "went bananas." Vecchio acknowledged he verbally harassed the tow truck operator and the police officers who would not intervene and allow Vecchio to remove the vehicle. He testified that a police officer assaulted him and he fought back. He acknowledged that he was under the influence of alcohol when this incident took place.

Francis Vecchio further testified that he comes from a family of nine children. He was raised as a strict Catholic in the family home and "didn't have it easy." At age 17, he moved from the parental home and lived with friends after a dispute with his parents. While living away from his parents, he used alcohol and narcotics occasionally to excess and it influenced his actions when he imbibed.

After his second arrest, he realized that he had problems and that DeRenzo, even though Vecchio maintains his actions were in self-defense, could have been killed. He recognized that his anger and temper were influenced by his drinking. He stated he

was given a probationary term with a condition of alcohol treatment program and attended the Maryville Alcoholic Rehabilitation Center. He attended the alcohol program on a weekly basis for about a year and was released from treatment, having successfully completed the program. Thereafter, he attended a Lifespring Seminar course for self-improvement. This Seminar consisted of 10 hours a day for 10 days. He then enrolled in the Camden County Vocational School as an apprentice and attended approximately one year when he became unemployed and was unable to continue. At that time, he discussed his unemployment situation with his probation officer and requested assistance in obtaining employment. He was tested and enrolled in a blackjack class. It was at that time he submitted his application to become a blackjack dealer. While waiting for the application process, he contacted the union and obtained a waiter's position with Tropicana. That position was only part-time employment and he later obtained a job at Bally's as a banquet waiter. He has been employed on a full-time basis with Bally's for approximatetly three years. He currently resides in Atlantic City with Mary E. Pennypacker, whom he intends to marry, and they have made plans for the same. He indicates that his probation has been extended to allow him to payoff approximately $200 that is still owed by way of restitution and he anticipates that this will be completed within the next two months. He further testified that since his last court experience in 1981, he has had no arrests or been involved in any incidents.

On his behalf, Mary E. Pennypacker testified that she met Francis Vecchio approximately a year and a half ago when she was going through a divorce. He told her that alcohol wasn't the answer to any problems and assisted her with her drinking problem. Since that time they have been going out. She related that on two occasions, Francis Vecchio was responsible for the apprehension of individuals who committed criminal acts by his actions and observations. She further testified that as far as she is concerned, he is a very upstanding citizen and is willing to help others. She is aware of his past that she described as going through some "bad situations."

All of the above testimony is consistent, unrebutted, credible and therefore found as fact.

From the testimony presented, respondent submits that petitioner's actions on July 6, 1980, constitute the indictable offenses of aggravated assault and malicious damage. As such, the same, if established by a preponderance of the evidence, would be a

statutory disqualifying offense under section 86G of the statute. Respondent further argues that approxiately one year after the incident involving Mr. DeRenzo, petitioner was again involved in an incident when under the influence of alcohol, resulting in violent behavior with law enforcement officers. As such, respondent argues that those actions indicate his licensure would be inimical to the policies of the act. Additionally, respondent argues that petitioner has not proven his good character, honesty and integrity by clear and convincing evidence from all the facts and circumstances presented, and further, that he has not demonstrated his rehabilitation since he is still on probation.

Petitioner argues that he has demonstrated that he has straightened out his life and for the past three years he has not had any problems; he deals with people everyday and has learned to cope with society by taking one step at a time. Further, he has successfully completed an alcohol rehabilitation program and is well regarded by Miss Pennypacker, whom he plans to marry. He also states that he relies strongly on the present job he holds as a waiter and that he has a very good work record.

CONCLUSIONS OF LAW

As to petitioner's action to revoke respondent's casino hotel employee registration, pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding such registration.

As previously stated, the Division contends that Mr. Vecchio's conduct constitutes a violation of Section 86C4 and, accordingly, establishes that he is not qualified to continue to hold a casino hotel employee registration.

Section 86C(4) of the Act is more commonly referred to as the "inimical clause." In this matter, Mr. Vecchio pled guilty to two disorderly persons offenses of simple assault and damage to property. He has not been convicted of a statutory disqualifier. The issue to be addressed is whether or not the Division has proven that his

conduct in the DeRenzo incident constitutes a crime of the second degree. Based on all of the foregoing facts as found, I **CONCLUDE** that the conduct does not constitute a crime of the second degree. The circumstances underlying the DeRenzo incident indicate that Mr. Vecchio was under the influence of alcohol and believed DeRenzo to have a weapon. Vecchio's version of the incident establishes a situation of self-defense.

The circumstances underlying the DeRenzo incident and the assaultive and violent behavior with the police officers which occurred approximately one and one-half years later demonstrate behavior which results from alcohol excess. I **CONCLUDE** that this misconduct is not directly related to operating the casino hotel and would not undermine the public confidence in the gaming industry. I also **CONCLUDE** that Vecchio's actions would not have a direct negative impact upon the public perceptions of the integrity of the casino industry.

I **CONCLUDE** that the Division has not established, by a preponderance of the credible evidence, that the continued licensure of respondent would be inimicable to the policies of the Act, pursuant to Section 86C(4).

Notwithstanding this finding, a licensed respondent under disciplinary proceedings faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-91D. This Section sets forth the specific criteria to be evaluated when a determination of rehabilitation is to be made. In applying the facts, Mr. Vecchio is presently a banquet waiter for Bally's and he has held that position for approximately three years. The offenses of July 1980 and December 1981 are serious; however, they occurred under circumstances admitedly caused by excessive use of alcohol. At the time these events occurred, Mr. Vecchio moved out of his parent's home and, in July 1980, was 19 years old. In December 1981, he had just turned 21. During that period, December 1981 through the present time, he has successfully completed an alcohol rehabilitation program and has worked diligently to improve his life. Ms. Pennypacker supports his efforts and no evidence has been offered to the contrary.

I **CONCLUDE** that respondent has established by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

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As to Mr. Vecchio's application for licensure by the Casino Control Commission as a casino employee, Mr. Vecchio is obliged under the Act to establish by clear and convincing evidence that he is a person of good character, honesty and integrity, N.J.S.A. 5:12-90. Respondent argues that the conduct previously described does not allow Mr. Vecchio to meet his affirmative burden.

Based on the foregoing facts as found, I **CONCLUDE** that as of this time, Mr. Vecchio has not established that he has a reputation for good character, honesty and integrity which is necessary as a casino employee. This conclusion is reached at this time due to his continued probation until payment of restitution and the fact that in July 1980 and December 1981, he was involved in acts of violent behavior. Although he has taken substantial steps to improve himself, and this action on his part should be acknowledged, I am not satisfied at this time that licensure is warranted.

Therefore, I **ORDER** that the complaint of the Division of Gaming Enforcement seeking the revocation of Mr. Vecchio's hotel employee registration be **DISMISSED** and that Mr. Vecchio's application for licensure as a casino employee be **DENIED** with a recommendation that if he continues his improved life style and habits, the Commission will consider allowing him to reapply for the same at the earliest opportunity afforded him under the law.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

1001

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sept. 9, 1985
DATE

Ralph J. Tolomeo
RALPH J. TOLOMEO, ALJ

Receipt Acknowledged:

September 9, 1985
DATE

Dorothy J. Figueira
CASINO CONTROL COMMISSION

Mailed to Parties:

September 11, 1985
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ij/ee

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EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

P-1 Indictment No. 56-80 for Frank P. Vecchio

P-2 Summons Monroe Township Court for Frank P. Vecchio, July 6, 1980

P-3 Warrant, Monroe Township Court for Frank P. Vecchio, July 8, 1980

FOR THE RESPONDENT:

R-1 Letter to Frank Vecchio from Mark Sprock, Probation Officer, dated May 8, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 83-243
OAL DOCKET NO. CCC 1716-84
REGISTRATION NO. 1218-40

STATE OF NEW JERSEY,
DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

PATRICIA IDA VERRUNO,

Respondent.

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission (Commission) upon the filing of an initial decision (settlement) by the Office of Administrative Law with the Commission on May 24, 1984, incorporating a stipulation of settlement between the parties and concluding the case in the Office of Administrative Law; and the parties having filed an amended stipulation of settlement with the Commission on July 10, 1984, which superseded the prior stipulation of settlement; and the Commission, after considering the entire record of the proceeding, having resolved at its public meeting of July 18, 1984, with the consent of the parties, to modify the amended stipulation of settlement,

IT IS on this 31st day of JULY 1985, ORDERED that the initial decision (settlement) of the Office of Administrative Law and the amended stipulation of settlement be and hereby are modified as follows:

1. Upon consideration of all the circumstances, the respondent is disqualified from registration pursuant to N.J.S.A. 5:12-86(c)(4) based upon her conviction on February 10, 1983, on charges of forgery, (fourth degree) contrary to N.J.S.A. 2C:21-1(a)(2) and theft by deception (fourth degree) contrary to N.J.S.A. 2C:20-4.

2. Pursuant to N.J.S.A. 5:12-91(e), the Commission waives the disqualification of the respondent in the interests of justice and therefore permits her to retain her casino hotel employee registration, provided, however, that, for a period of one year beginning July 18, 1984, the respondent does not seek employment in the casino industry in any position other than a banquet server.

IT IS FURTHER ORDERED that the respondent is disqualified from casino hotel employee registration based upon the reasons stated in the initial decision (settlement) and the amended stipulation of settlement, as modified, which are incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that in recognition of the respondent's rehabilitative efforts to date disqualification is waived pursuant to N.J.S.A. 5:12-91(e) and she be

permitted to retain her casino hotel employee registration; and

IT IS FURTHER ORDERED that Patricia Ida Verruno is prohibited from reapplying for any license, registration, qualification or approval required under the Casino Control Act other than a casino hotel employee registration except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Patricia Ida Verruno, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 7716-83

AGENCY DKT. NO. 83-243

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

PATRICIA IDA VERRUNO,

Respondent.

APPEARANCES:

William E. Mountford, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

George F. Miksis, Esq., for respondent

Record Closed: May 22, 1984 Decided: May 23, 1984

BEFORE **NORMAN D. SMITH,** ALJ:

This matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The parties have agreed to a settlement and have prepared a letter/stipulation indicating the terms thereof, which is attached and fully incorporated herein.

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I have reviewed the record and the terms of settlement and I **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5/23/84
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 29 1984
DATE

Ronald L. Parker/pab
OFFICE OF ADMINISTRATIVE LAW

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FILED
JUL 1 0 1984
CASINO CONTROL COMMISSION
LEGAL DIVISION

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: William E. Mountford, Jr.
Deputy Attorney General
(609) 292-0941

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-243
OAL DOCKET NO. CCC 7716-40

STIPULATION OF SETTLEMENT

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Plaintiff,

vs.

PATRICIA IDA VERRUNO,

Respondent.

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Irwin I. Kimmelman, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by William E. Mountford, Jr., Deputy Attorney General, and George F. Miksis, Esquire, Attorney for Respondent, Patricia Ida Verruno, and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1) WHEREAS Respondent presently holds casino hotel employee registration #01218-40 issued by the Casino Control Commission in May of 1978.

2) WHEREAS Respondent was employed by Resorts International Hotel/Casino as a waitress until her termination on May 13, 1980.

3) WHEREAS Respondent is presently employed by the Playboy Hotel/Casino as a banquet server.

4) WHEREAS Resp ent was indicted by an Atlant. County Grand Jury and charged with forgery - fourth degree (N.J.S. 2C:21-1a(2)) and theft by deception - fourth degree (N.J.S. 2C:20-4) on April 15, 1982. Said indictment alleging that between January 1, 1980 and March 29, 1980, Respondent forged the casino public relations manager's name at Resorts International Hotel/Casino in order to create a false impression that customers of the Resorts' Superstar Theatre did pay their bills at the theatre with complimentary checks, when in fact Respondent knew that customers did pay cash for their checks and she in turn kept $249 rightfully belonging to Resorts International Hotel/Casino.

5) WHEREAS, on January 31, 1983, Respondent pled guilty to the above indictment and, on February 10, 1983, was sentenced to two days in the county jail with credit for two days already served, fined $350 and ordered to pay $50 to the Violent Crimes Compensation Board.

6) WHEREAS the above-mentioned guilty plea did not constitute a statutory disqualifier under Section 86(c)(4) of the Casino Control Act.

7) WHEREAS extensive testimony taken on February 2, 1984, at the Office of Administrative Law, the following mitigating circumstances were revealed: six months prior to committing the crimes in question, Respondent's 11½ year old son died on June 24, 1979 following open heart surgery. This left Respondent in a state of emotional trauma for approximately one year. During this time, Respondent had little regard for her own personal well-being. In addition thereto, Respondent has been raising three other children as a single parent, since the death of her husband in July of 1976.

8) WHEREAS the mitigating facts, supra, were proved by the Respondent at the above hearing which would mitigate against revocation of her casino hotel employee registration.

9) WHEREAS the incident in question occurred during the first three months of 1980 and the Respondent has had no additional encounters with the Criminal Justice System since that time other than the one previously mentioned.

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WHEREAS the parti. recognize the need to comply th the Casino Control Act and the regulations promulgated therefrom, and Patricia Ida Verruno, has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by and between the parties hereto that:

A. Respondent agrees that for one year, commencing with the date of the acceptance of this stipulation of settlement by the Casino Control Commission, Respondent will not seek employment in the casino industry other than in the position of banquet server whereby she would not be involved in, either directly or indirectly, the handling of money.

B. This settlement shall be a full and final settlement of all matters contained herein.

The undersigned consent to the form and entry of the above Stipulation of Settlement.

William E. Mountford, Jr.
William E. Mountford, Jr.
Deputy Attorney General
Attorney for Plaintiff

George F. Miksis, Esq.
Attorney for Respondent

Patricia Ida Verruno
Patricia Ida Verruno, Respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-169
OAL DOCKET NO. CCC 8914-84
APPLICATION NO. 43824-21

APPLICATION OF
AUDREY M. VITALI
FOR A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE)

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed to the initial decision and a reply filed thereafter; and the Commission having considered the entire record of these proceedings at its public meeting of June 5, 1985,

IT IS on this 9th day of July 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Audrey M. Vitali is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Audrey M. Vitali is prohibited from applying for any license, qualification or

approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Audrey M. Vitali from obtaining a casino hotel employee registration; and

IT IS FURTHER ORDERED that copies of this final order be served upon Audrey M. Vitali, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8914-84

AGENCY NO. 84-EA-169

AUDREY M. VITALI,

Petitioner,

v.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondent.

John L. Grossman, Esq., for petitioner (Perskie and Nehmad, attorneys)

Anthony D'Elia, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: April 1, 1985 Decided: April 24, 1985

BEFORE **JEFF S. MASIN,** ALJ:

Audrey M. Vitali applied to the Casino Control Commission (Commission) for a casino employee license with a designation as junket representative. The Division of Gaming Enforcement (Division) opposed licensure in a letter filed with the Commission on August 10, 1984. Mrs. Vitali requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 14, 1985 and a prehearing order was issued on January 16, 1985. A hearing was held before Administrative Law Judge Jeff S. Masin on March 18, 1985, at the Brigantine Municipal Court. Thereafter, the parties submitted a written stipulation of facts which was received on April 1, 1985 at which time the record closed.

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THE ISSUE

The Division objects to Mrs. Vitali's licensure because it believes that she can not establish the requisite good character, honesty and integrity required for licensure under N.J.S.A. 5:12-89(b)(2), as incorporated by reference in sections 90(b) and 102(b) of the Casino Control Act. The specific grounds for the Division's belief is that Ms. Vitali failed to include certain income in her federal and state income tax returns filed for the years 1981-82. The burden of establishing the requisite good character, honesty and integrity is on the petitioner, who must prove that she has these attributes by clear and convincing evidence. N.J.S.A. 5:12-89(b)(2).

THE EVIDENCE

The parties have entered into a stipulation of certain facts which are set forth below and which are incorporated in this initial decision as **FINDINGS:**

1. Audrey Vitali failed to report her total income derived from her employment with Casino Adventures Limited in 1981 and 1982 Federal and New York State income tax returns.

2. On or about August 8, 1984, Mrs. Vitali executed amended Federal and New York State tax returns, which reflected net changes in total income of $2,600 for the year 1981 and $5,720 for the year 1982.

3. On or about August 8, 1984, Mrs. Vitali paid her delinquent taxes for the years 1981-82.

In addition, the parties entered into a stipulation at the hearing that on July 5, 1982, Mrs. Vitali's daughter died in an accident.

Mrs. Vitali testified that she was employed by Casino Adventures Limited, a business which was located three blocks from her house in Merrick, Long Island, New York. She worked as a junket representative for the company, which was operated by one Sy Zemsky. Mrs. Vitali previously had been employed with Warner Communications in New York for eighteen years as a secretary and had reported her income on her income tax returns from that employment. In 1981 she reported her income for the part of the

year that she worked for Warner Communications on her original tax return. However, she did not report the income which she received from Casino Adventures in 1981. She testified that her tax returns were filed as part of a joint return with her husband Anthony. The taxes were prepared by an accountant and her husband submitted the information to the accountant. Her husband was aware that she was employed by Casino Adventures Limited. Mrs. Vitali noted that it was her general practice not to review the prepared returns in detail after they came back from the accountant, but to merely sign the form without reading it. She claimed that she first learned that her income from Casino Adventures was not reported on the 1981 tax returns when she was asked to send a copy of the return to the Division.

Mrs. Vitali testified that she was not paid on the books by Sy Zemsky until September 1983. When she began her employment with Casino Adventures she was paid $20 a day, although there was no set salary at the beginning of the employment. She had never been paid in this manner before, that is, cash off the books. She expressed the opinion that had she been given a W-2 form for the money she made from Casino Adventures she would have reported her income.

In 1982 Mrs. Vitali was also paid off the books and her original tax return for 1982 income did not include the money received from Casino Adventures. That tax return was filed in 1983 and Mrs. Vitali noted that she had suffered the tragic loss of her daughter in an accident on July 5, 1982, and that thereafter "nothing fell in place" and she had difficulty getting herself together. She has undergone psychotherapy since July 1982. (Letter of Arnold J. Levinson, Ph. D., Clinical psychologist, J-1 in evidence.)

As part of her presentation with respect to good character, honesty and integrity, Mrs. Vitali presented letters from a number of individuals, each whom each spoke highly of her responsibility, trustworthiness, honesty and character. These letters came from relatives, as well as from business associates and friends. It is not clear whether each of these individuals was aware of Mrs. Vitali's failure to report her earnings with Casino Adventures Limited. Some of the letters of recommendation presented are as old as 13 years and were produced as references to other jobs sought by Mrs. Vitali in 1972. Obviously these letters are of no value whatsoever in assessing Mrs. Vitali's present good character, honesty and integrity or that of her recent past. While admitted as evidence, their relevance is questionable.

DISCUSSION

Mrs. Vitali offered little if any excuse for her failure to report her income from Casino Adventures Limited. She had obtained a job which was quite convenient for her and in which she was paid off the books. She did not explain why she was paid in this fashion or why she did not request a W-2 form from her employer. She presented no evidence of any specific reason why she did not assure that her income from this job was reported to the accountant and included in her tax return. She did note that it was not her practice to review the return after it came back from the accountant, but this is hardly an excuse for the nonreporting of income.

Mrs. Vitali's comments concerning her mental condition after the tragic death of her daughter in July 1982 are quite understandable. No doubt she was distraught and had a great deal of difficulty functioning. However, while this might conceivably have had some affect on her actions with respect to the reporting of her income on her 1982 tax return, filed in 1983, it had no bearing whatsoever on her 1981 tax return, filed in 1982 prior to the date of the accident. There is no reason to believe that Mrs. Vitali would have been any more careful or accurate in reporting her earnings from Casino Adventures Limited in the 1982 return had there been no accident then she was in the 1981 return which preceded that event.

Having considered all of the evidence, including an evaluation of Mrs. Vitali's testimony and her creditability, and having given due weight to the character references which she presented, I **FIND** that Mrs. Vitali purposely and intentionally did not report her earnings from Casino Adventures Limited on her 1981 and 82 tax returns. I **FIND** that her purpose in doing so was to avoid the payment of the additional taxes that might due on this income. I **FIND** that she had secured employment which was convenient to her both in terms of its location and her ability to receive earnings off the books and under the table, thus giving extra cash to the Vitali family not subject to withholding and taxes. I **FIND** nothing in the evidence to indicate that Mrs. Vitali's failure to report this income was because of any justifiable error or even negligence. This finding with respect to both the 1981 and 82 returns is made without demeaning the effects of the loss of her daughter upon her. However, I **FIND** no reason to believe that the income would have been reported in the 1982 return even if there had been no accident. It is quite likely that this

money would never have been reported to the IRS or the State authorities had it not been for the licensing procedure which Mrs. Vitali had to undergo in order to obtain the casino employee license.

The internal revenue laws of this country are founded upon the proposition that the citizens will honestly and completely report their income to the government and pay the taxes due. While there is no question but that there is evasion of taxes and that many individuals do not report their entire income, where an indiviual seeks a license from the state to be employed in a highly regulated industry and where the Legislature has determined that holders of such licenses must have a high degree of good character, honesty and integrity, it is extremely difficult to say that one who has purposely and intentionally attempted to evade taxes can qualify for such a license. The incidents involved here occurred only a few years prior to this decision. They indicate that Mrs. Vitali, for whatever reasons, was willing to engage in illegal activity for financial gain, be it of a limited nature. They further indicate that her character is not above reproach and that the integrity of her word, as emplified by her signature on her tax return, is not very strong.

For the reasons expressed, I **FIND** that Audrey M. Vitali has failed to establish by clear and convincing evidence that she has the requisite good character, honesty and integrity required for licensure as a casino employee. Therefore I **CONCLUDE,** pursuant to N.J.S.A. 5:12-89(b)(2), 90(b) and 102(b) that her license application must be denied.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 24, 1985
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

April 25, 1985
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 29 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBIT LIST

J-1	Letter of January 30, 1985, from Arnold J. Levinson, Ph. D.
J-2	Letter of January 30, 1985, from F.R. Arlotta
J-3	Letter from Mrs. Anita Pantano
J-4	Letter from Mrs. Diane Murino
J-5	Letter of January 16, 1985, from Ann Ginsberg
J-6	Letter of January 17, 1985, from Esther Zetlin
J-7	Letter of January 6, 1985, from Rev. Benedict Riccardo
J-8	Letter of April 19, 1972, from Harriette Hirsch, with attached letter June 13, 1969, from Caroline Baris and letter of October 19, 1972, from Gerald Gorman
J-9	Letter of November 24, 1984, from Monroe and Louis Singer
J-10	Letter of November 24, 1984, from Sheldon and Roslyn Levy
J-11	Letter of November 21, 1984, from Sol M. Wald D.D.S.
J-12	Letter of November 14, 1984, from Sheila Falcon
J-13	Letter of November 17, 1984, from Paul Levitt
J-14	Letter of November 9, 1984, from Norman Cooper
J-15	Letter of November 9, 1984, from Vincent Tisi
J-16	Amended U.S. Individual Income Tax Return, 1040X, 1981
J-17	Amended U.S. Individual Income Tax Return, 1040X, 1982
J-18	Amended New York State Resident Income Tax Return, IT-201-X, 1981
J-19	New York State Amended Resident Income Tax Return, IT-201-X, 1982
J-20	Photo copies of checks to Internal Revenue Service in the amounts of $751 and $1,505 and to New York State Income Tax Bureau for $122 and $179
J-21	Notice from Internal Revenue Service, dated September 24, 1984, four pages
J-22	Letter of August 20, 1984, from Audrey Vitali to Casino Control Commission
J-23	Personal History Lead Disclosure Form-2A, received December 9, 1982
J-24	Photo copies of W-2 forms from National Cleaning Contractors Inc., Steven Sobil and Co., Exterminating Sus Co.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-178
OAL DOCKET NO. CCC 5262-84
LICENSE NO. 40556-21
REGISTRATION NO. 32100-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

WILLIAM E. WATERS,

Respondent.

FINAL ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of February 6, 1985 and May 1, 1985,

IT IS on this 3rd day of DECEMBER 1985, ORDERED that the initial decision in this matter is modified as follows:

1. The portion of the initial decision which states that the applicant had demonstrated by clear and convincing evidence his rehabilitation under section 90(h) of the Act is rejected. Such a finding is inconsistent with the facts and analysis supporting the conclusion that the respondent's possession of a controlled dangerous substance in a casino hotel renders his continued licensure inimical to the Casino Control

Act and casino operations pursuant to N.J.S.A. 5:12-86(c)(4) and (g).

2. The portion of the initial decision which assesses a civil penalty of $2,000 for the respondent's conduct in possessing a controlled dangerous substance in a casino hotel is rejected. The recommended sanction is inappropriate for two reasons. First, no additional sanction is necessary in light of the Commission's determination to revoke Mr. Waters' casino employee license. Second, even if Mr. Waters had been found to be qualified for licensure, the Commission declines to impose a sanction for violations of the criminal law as distinguished from violations of the Act or Commission regulations.

3. In light of all the circumstances and pursuant to N.J.S.A. 5:12-91(e), it is consistent with public policy and in the interest of justice to waive the respondent's disqualification pursuant to N.J.S.A. 5:12-86, to permit him to retain his casino hotel employee registration.

IT IS FURTHER ORDERED that the casino employee license of William E. Waters is revoked substantially for the reasons stated in the initial decision as modified, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that William E. Waters' disqualification is waived pursuant to N.J.S.A. 5:12-91(e), permitting him to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that William W. Waters is restricted from applying for any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon William E. Waters, the Division of Gaming Enforcement, the Office of Administrative Law and all operating casinos within ten (10) days of the day hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5262-84

AGENCY DKT. NO. 84-178

DIVISION OF GAMING ENFORCEMENT,
DEPARTMENT OF LAW & PUBLIC SAFETY,

Petitioner,

v.

WILLIAM E. WATERS,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Paul Vagianos, Deputy Attorney General, at the prehearing conference) (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

William E. Waters, respondent, pro se

Record Closed: November 13, 1984 Decided: December 28, 1984

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against William E. Waters, respondent. The Division alleged that Mr. Waters had committed various criminal violations, for which the Division seeks revocation of his casino employee license, pursuant to Section 129 of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed complaints with the Casino Control Commission (Commission) on May 16, 1983 and again on May 24, 1984. By letter dated May 30, 1984, the Commission advised the respondent of the pending action and of his right to a hearing. By answer dated June 25, 1984, the respondent requested a hearing. On July 17, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 14, 1984. The matter was heard on November 15, 1984, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

On August 19, 1980, the Commission issued casino hotel employee registration no. 32100-40 to Mr. Waters. On December 7, 1982, the Commission issued casino employee license no. 40556-21 to the respondent.

From June to September 1980, the respondent was employed as a cashier non-gaming by the Sands Casino Hotel. He left his position to return to school in order to enhance his employability.

On March 9, 1982, the respondent successfully completed a dealer course of study at Casino School, Inc.

On December 20, 1982, the respondent was employed as a blackjack dealer by the Claridge Hotel/Casino (Claridge).

The applicant was involved in an incident on April 14, 1983. He was observed by a Commission inspector playing blackjack at the Tropicana, a Ramada Hotel and Casino (Tropicana) (P-1). The respondent was arrested by Division detectives, and he was ultimately ejected from the casino. A Division detective searched the respondent and discovered marijuana in his possession (P-2).

The Division filed a complaint against the respondent with the Commission, which alleged a violation of N.J.S.A. 5:12-100n, gaming while employed by a casino. On October 19, 1983, the Commission approved a stipulation of settlement and imposed a $200 fine against the respondent.

As a result of the discovery of marijuana, the respondent was also charged with a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana, under 25 grams (P-2). On December 28, 1983, the applicant pled guilty in Atlantic City Municipal Court to the charge and was issued a six-month conditional discharge. However, because the respondent failed six drug tests the conditional discharge was rescinded and a $100 fine plus $25 costs was invoked. The circumstances underlying the discovery of the marijuana were in dispute and will be discussed, infra. Nevertheless, the respondent testified he knew that his gambling was a violation of the Act and that he had used marijuana on the date of the incident.

On April 15, 1983, the respondent was suspended from his employment at the Claridge for a period of nine months because of the pending charges. He was returned to his position upon the termination of the suspension.

The applicant was also involved in an incident on November 9, 1983, which led to his arrest and charges of a violation of N.J.S.A. 2C:15-1, robbery. On December 8, 1983, the Atlantic County Prosecutor's Office remanded the matter to the Atlantic City Municipal Court on downgraded charges of a violation of N.J.S.A. 2C:12-1a(1), simple assault, and a violation of N.J.S.A. 2C:20-3, theft under $200. On December 28, 1983, the charges were dismissed by reason of the complaint's failure to appear. The circumstances underlying this incident were also in dispute and will be discussed, infra.

On June 4, 1984, the respondent left his position with the Claridge in order to direct his complete attention to the within matter. His employment at the Claridge has been positive in all respects and he is eligible for reemployment (R-4).

All of the preceding evidence is undisputed, unbelievable and is thus **FOUND AS FACT.**

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(B) DISPUTED FACTS

In dispute were the circumstances underlying the discovery of marijuana in the possession of the respondent on April 14, 1983, the circumstances underlying the incident of November 9, 1983, and the respondent's current relationship, if any, with drug activity.

With regard to the incident of April 14, 1983, the respondent took issue with a statement in various law enforcement reports to the effect that he voluntarily emptied his pockets and produced the marijuana (P-1 and P-2). The respondent testified that the marijuana was removed from his pocket without permission by Division agent Harry Bloom. Regardless of the means by which the marijuana was discovered, the basic facts were not in dispute, i.e., that the respondent, as a licensed casino employee and while employed by the Claridge, was present in the Tropicana, was gambling and was in the possession of an illegal drug. The means by which the marijuana was discovered are not relevant to the outcome of this proceeding. Nevertheless, I have no reason not to believe the respondent's testimony.

With regard to the incident of November 9, 1983, the Division produced an investigation report prepared by a member of the Atlantic City Police Department, which was based entirely upon comments made by Charles H. Crutchfield, the purported victim. Mr. Crutchfield contended that the respondent and the respondent's brother had stolen jewelry with a value in excess of $1,000 from him. None of the alleged misconduct was observed by police officers. The Division did not produce Mr. Crutchfield to testify on its behalf. Therefore, it was not possible to access the reliability of the statements contained in the report. Accordingly, the report has no evidential value.

Mr. Waters testified on his own behalf and described the circumstances underlying the incident. On October 16, 1983, the respondent was visited by Ella Nora Johnson from New York City, who was his girl friend at that time. Ms. Johnson also visited with close friends of the respondent, including Mary Eda Downing and James Jones, the aunt and uncle of Mr. Crutchfield. Mr. Crutchfield lived at the same address as his aunt and uncle. While the respondent was at work that evening, Ms. Johnson remained with her aunt and uncle. When the respondent picked up Ms. Johnson late that evening, she informed him that Mr. Crutchfield had taken her jewelry. Ms. Downing and Mr. Jones had directed Mr. Crutchfield to leave the residence. The respondent advised Ms. Johnson that he would speak with Mr. Crutchfield. On November 9, 1983, the

respondent and his brother, Larry Waters, approached Mr. Crutchfield while he was seated in a parked car. They inquired with regard to Ms. Johnson's jewelry. An argument ensued. Mr. Crutchfield threw open the car door and struck the respondent. The respondent and Mr. Crutchfield began to fight. Larry Waters broke up the fight. Mr. Crutchfield denied that he took the jewelry. The respondent stated that Ms. Johnson had not filed a complaint against Mr. Crutchfield because it was a family matter and she believed that the jewelry would be returned.

The respondent also produced a sworn statement of Ella Nora Johnson, which sets forth the events on the night the jewelry was taken (R-2). This statement corroborates the respondent's testimony.

The respondent also called Detective Dwayne Brock of the Atlantic City Police Department. The detective has been in the employ of the Department for the past twelve years and has been assigned to criminal investigation for the past nine years. Det. Brock assisted in the investigation of Mr. Crutchfield's complaint regarding the incident of November 9, 1983. Det. Brock determined that Mr. Crutchfield provided false information to the police department regarding the complaint. More specifically, Mr. Crutchfield provided false information regarding his address, at which it was determined he had never resided, and he changed his statement regarding the sequence of events on more than one occasion. Det. Brock was of the opinion that the items identified by Mr. Crutchfield as stolen never existed in the first place.

Det. Brock also produced the police department arrest card for Mr. Crutchfield (R-1). The document reveals that Mr. Crutchfield was convicted of drug possession offenses in 1979 and again in 1980. Other arrests and charges are set forth, but there is no disposition thereof.

Aside from the police report which recited Mr. Crutchfield's version of the incident (P-3), the Division did not offer any rebuttal to the respondent's testimony regarding the incident of November 9, 1983. As stated, exhibit P-3 had no evidential value. Accordingly, it is essential to assess the respondent's credibility. Initially, Mr. Water's position in this matter must be recognized. He is the holder of a casino hotel employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. However, from my observations of the respondent's demeanor, the plausibility of his testimony, the fact that his testimony was corroborated by the sworn

statement of Ms. Johnson (R-2), the testimony of Det. Brock, the criminal record history of Mr. Crutchfield, and the absence of any other proofs to support the Division's accusations, I am persuaded to believe that the respondent testified truthfully. His testimony was straightforward, comprehensive, consistent and believable. In the final analysis, I am persuaded to accept his testimony in all respects with regard to the incident.

The respondent also testified that he has not been involved in any subsequent misconduct. He wishes to retain his license for greater employment opportunities.

The respondent also testified that although he has used marijuana as his drug of choice in the past, he has been drug free for the past few months. The respondent offered a urinalysis report prepared by the Institute for Human Development for a screening conducted on November 7, 1984, the results of which were negative for marijuana (R-3).

In the absence of any evidence to the contrary, I am persuaded that the respondent is currently drug free.

After consideration of the entire record in this matter, I further **FIND** that:

1. The circumstances underlying the discovery of marijuana on the possession of the respondent on April 14, 1983, are irrelevant to this matter.

2. The respondent's testimony regarded in the incident of November 9, 1983, is believable and persuasive in all respects and is accepted in full and incorporated herein as though fully set forth at length.

3. The respondent is currently drug free.

DISCUSSION OF LAW AND CONCLUSION

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) of the act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2 of the New Jersey statutes be disqualified from licensure. Under Section 86c(1) the Division alleged that the respondent's conduct on November 9, 1983, constituted a violation of N.J.S.A. 2C:15-1, robbery, which is a disqualifying offense.

The Division failed to establish the elements of the charged offense and produced no evidence of the Commission thereof. In addition, the respondent's testimony established that he did not commit the charged violation.

I **CONCLUDE** that the Division has failed to establish by the preponderance of the credible evidence a violation of N.J.S.A. 5:12-86c(1) by means of section 86g of the Act.

(B) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or

> enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereto, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981).:

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1h(6). Related directly to this purpose, the Legislature stated "that the regulatory provisions . . . are designed to extend strict State regulations to all persons . . . practices and associations related to "casinos and that the "comprehensive law enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division contends, through section 86g, that although the respondent's conviction of a violation of N.J.S.A. 24:21-20a(4), possession of marijuana under 25 grams, is not a disqualifying offense under section 86c(3), that his conduct is otherwise inimical to the policies of the Act and constitutes a disqualifying offense.

The circumstances underlying the incident are that the respondent committed his misconduct in a licensed casino-hotel while he was a licensed casino employee, while he was employed as a dealer by another casino-hotel, and in knowing and contumacious disregard of the regulation. Therefore, this misconduct is related directly to the operations of a casino hotel and would, unquestionably, undermine the public confidence in the gaming industry. Also, the respondent's actions would have a direct negative impact on the public perceptions of the intergrity of the casino industry.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent would be inimical to the policies of the Act, pursuant to Section 86c(4).

(C) N.J.S.A. 5:12-90h

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs or the recommendation of persons who have the applicant under their supervision.

First, Mr. Waters is licensed as a casino employee and, although currently not employed by a casino hotel, was employed as a blackjack dealer by the Claridge. As such, he had direct responsibilities for gaming activities and had substantial contact with the patrons of the casino.

Second, respondent was convicted of a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana, under 25 grams. By virtue of the statutory penalty for such an offense, it is not serious in nature. Nevertheless, given the circumstances underlying the offense it becomes quite serious.

Third, the offense was committed by a licensed casino employee, then currently employed by another casino-hotel and in knowing and contumacious disregard of the regulations governing the casino industry and the criminal laws of this state.

Fourth, the offense occurred on April 14, 1983, approximately one and one-half years ago.

Fifth, although the respondent offered no evidence of his age at the time of the offense, it appears that he was approximately in his mid-twenties. There was no indication that his misconduct was due to immaturity.

Sixth, the respondent's criminal misconduct was isolated in nature. However, the facts that he failed six drug tests and did not receive a conditiona discharge indicate that his drug use was not isolated in nature. This was corroborated by the respondent's testimony.

Seventh, there were no social conditions which contributed to the offense.

Eighth, Mr. Waters has demonstrated some rehabilitation. He ultimately pled guilty to the charge and has accepted responsibility for his misconduct. However, he did not successfully complete the conditions of his conditional discharge. Nevertheless, the respondent presented affirmative evidence that he is currently drug free, and there is no indication that the respondent used any narcotic substances other than marijuana. In addition, the respondent has maintained a positive employment record within the casino industry. However, he resigned his position ostensibly for the purposes of resolving this matter. Giving the greatest weight to the rspondent's employment record in the casino industry and consideration of the manner in which he conducted himself during this hearing process, I am persuaded to believe that the respondent has, by the slimmest of margins, demonstrated his rehabilitation. In the final analysis, there is every reason to believe that there is little, if any, likelihood of a repetition of such misconduct. However, the fact that the respondent may have established his rehabilitation does not necessarily avoid the necessity of imposing a penalty for the purpose of ensuring future compliance with the regulatory scheme.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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(B) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Waters was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The burden carried by Mr. Waters was substantial by reason of the circumstances underlying the incident of April 14, 1983. However, for the reasons set forth above with regard to the respondent's rehabilitation, I am persuaded to believe that there is little likelihood that future misconduct will occur and that the respondent presents no risk to the public or to the integrity of casino gaming in the state. Accordingly, the respondent has demonstrated that he is a person of good character, honesty and integrity and is suitable for continued licensure.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under Section 89b(2) of the Act.

(E) Penalty

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction has to be made:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activities;

e. To prevent future misconduct of a like nature from recurring.

The Division sought revocation of the respondent's casino employee license.

The respondent's conduct constituted a clear violation of the Act and the regulations thereunder, as well as a violation of the criminal laws. This offense, as does any violation of the regulatory scheme, constitutes a potential threat to the integrity of licensed gaming and cannot be permitted to pass unchecked. Further, the offense was serious in nature. Nevertheless, the misconduct is not irreparable.

With the exception of the subject incident, the respondent's employment history in the casino industry is most positive. In addition, I am persuaded that there is little likelihood, if any, that the misconduct would be repeated.

In order to ensure that the respondent recognizes his misconduct and that he will not repeat it in the future, and in order to maintain "the public confidence and trust in the efficacy and integrity of the regulatory process," N.J.S.A. 5:12-1b(6), the imposition of a penalty is warranted. A fine in the amount of $2,000 is an appropriate remedial sanction.

I **CONCLUDE** that the respondent be fined in the amount of $2,000.

DISPOSITION

IT is **ORDERED** that William E. Waters be fined in the amount of $2,000. It is further **ORDERED** that the fine be payble within six months of the date of the final order or within two months of the respondent's return to employment in the casino industry, whichever event occurs first.

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 28, 1984
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

December 31 1984
DATE

Mary Ann Tomczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 03 1985
DATE

Ronald J. Parker/sko
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Memorandum to Assistant Chief Inspector Thomas W. Gallagher from Principal Inspector Ralph G. Frulio, April 14, 1983; State of New Jersey, Casino Control Commission Inspector's Narrative, prepared by Inspector Karen Brown, April 14, 1983; Tropicana, a Ramada Hotel and Casino, Security Department - Ejection/Arrest Report, William Waters, April 14, 1983; Tropicana, a Ramada Hotel and Casino - Incident Report, William Waters, April 4, 1983 (4 pages)

P-2 New Jersey State Police - Investigation Report, prepared by Agent Harry Bloom, April 14, 1983; Supplementary Investigation Report, prepared by agent Harry Bloom, June 6, 1983; New Jersey State Police - Arrest Report, William Edward Waters, prepared by Agent Harry Bloom, April 14, 1983; State of New Jersey v. William Edward Waters, Atlantic City Municipal Court, Complaint, April 14, 1983 (6 pages)

P-3 Atlantic City Police Department - Investigation report, November 9, 1983; Arrest Report, Larry Waters, November 10, 1983, State of New Jersey v. William Waters, Atlantic City Municipal Court, complaint, November 9, 1983; Office of the Prosecutor, County of Atlantic - Status of Complaint, December 8, 1983 (four pages)

R-1 Office of the Prosecutor, County of Atlantic - Status of Complaint, December 8, 1983 (4 pages)

R-2 Atlantic City Police Department - Arrest Card, Charles Henry Crutchfield

R-3 Sworn Statement made by Ella Nora Johnson, November 6, 1984

R-4 Institute for Human Development - Urinalysis Report, William Waters, November 9, 1984

R-5 Letter from Hank McCullough, November 7, 1984

R-6 Letter from Allen L. Gill, NoVember 7, 1984

WITNESS LIST

For the Petitioner:

None

For the Respondent:

Dwayne Brock

William E. Waters

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EA-132
OAL DOCKET NO. CCC 8011-84
APP. NO. 44021-21

APPLICATION OF CHARLES M. WEINBERG

FOR A CASINO EMPLOYEE LICENSE — FINAL ORDER

(JUNKET REPRESENTATIVE)

A hearing in this matter having been held before the Office of Administrative Law and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 5, 1985,

IT IS on this 3rd day of JULY, 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Charles M. Weinberg, the Division of Gaming Enforcement and the Office of Administrative Law within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8011-84

AGENCY DKT. NO. 84-EA-132

CHARLES M. WEINBERG,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Respondent.

Lawrence A. Mintz, Esq., for the applicant (Goldenberg, Mackler & Sayegh, P.C., attorneys)

Anthony V. D'Elia, Deputy Attorney General, for the respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney; Lee D. Gottesman, Deputy Attorney General, at the prehearing conference)

Record Closed: March 15, 1985 Decided: April 29, 1985

BEFORE **RICHARD L. VOLIVA, JR.**, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Charles M. Weinberg, petitioner, for licensure by the Casino Control Commission (Commission) as a junket representative, sole owner/operator junket enterprise, pursuant to N.J.S.A. 5:12-102b. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed

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licensure on the basis of its contention that Mr. Weinberg had committed disqualifying criminal conduct, pursuant to section 86c(4) of the Casino Control Act (Act), and did not possess the requisite degree of good character, honesty and integrity. More specifically, the Division contended that Mr. Weinberg's conviction for illegal gambling activities in Louisiana in 1975 rendered licensure inimical to the policies of the Act.

PROCEDURAL HISTORY

On January 3, 1983, Mr. Weinberg submitted his Personal History Disclosure Form - 2A (PHDF-2A) to the Commission (J-5). By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated July 16, 1984, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. By letter filed on October 11, 1984, the applicant requested a hearing. On October 25, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 14, 1984, before former Administrative Law Judge Valerie H. Armstrong, and the matter was scheduled for hearing. The record closed on March 15, 1985, upon receipt of a submission from Deputy Attorney General D'Elia (C-1).

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Weinberg is 46 years of age (J-5). He resides in Monroe, Louisiana, with his wife of 11 years.

The applicant is a 1956 graduate of Nevell High School in Monroe, Louisiana. Also, he is a 1960 graduate of Louisiana State University.

The applicant attended Louisiana Law School for one semester before he was drafted into the United States Army. He served 23 months and, in January 1964 was honorably discharged.

The applicant returned to Monroe, Louisiana, and until 1967 was employed by Weinberg Auto Parts Company, his father's business, which was involved in the automotive supply and scrap metal industry.

The applicant relocated to New Orleans where he was employed for one year by an automobile agency as a salesman.

In 1968, the applicant relocated to Las Vegas, Nevada, where he was employed for a period of six months by the Stardust Casino as a floorman.

Thereafter, the applicant returned to Louisiana and until 1970 was employed by Weinberg Scrap Material Company, which was also his father's business.

In approximately March 1970 the applicant formed the Action Travel Service Agency in Monroe, Louisiana. This agency is a sole proprietorship and is involved in world wide group travel business. The applicant is the holder of a Louisiana Travel Agency license.

From October 1970 to the present, the applicant has been a junket representative of the Dunes Casino in Las Vegas. He has been licensed by the Nevada Gaming Commission, first as an agent, and currently as a junket representative.

Monroe, Louisiana, is a small rural southern town located in the northeast corner of the state near Arkansas and Mississippi. It has a population of between 35,000 and 40,000, and its industry is primarily agricultural.

For approximately a one-year period which terminated in March 1974 the applicant was involved in illegal gambling activities. As a result, the applicant together with four others were charged in an indictment filed in the United States District Court for the Western District of Louisiana-Monroe Division, dated August 9, 1974, with two counts of violations of 18 U.S.C. §1955, "willfully, knowingly, and intentionally conduct and finance and manage and supervise and direct and own all or part of an illegal gambling business" (J-1). On September 16, 1974, the applicant pled not guilty to the charges (J-3). The jury which heard the case was deadlocked and a mistrial was declared (J-2). On December 31, 1974, a motion for judgment of acquittal was granted because it was

determined that the government could prove the charges against only four of the individuals, including the applicant, and the statutory charges required that five or more persons be involved in the illegal business.

In April 1975, a bill of information was filed against the applicant and four other persons in the Fifth District Court of Louisiana, Parish of Richland, which, in part, charged the applicant with three counts of violating L.S.A. - R.S. 14:90, gambling (J-4A). These charges were based upon the same events which formed the basis for the indictment in federal court. The applicant pled not guilty. Thereafter, the applicant retracted his plea and pled guilty to the first count, which was a misdemeanor offense. The applicant was fined $350. The second and third counts were nolprossed (J-4B). Two of the remaining defendants also pled guilty to a single count and were fined $350 and $500 respectively. Marion Nugent, another defendant, pled guilty to two counts and was sentenced to (1) a fine of $500 and 60 days, suspended, and seven months of unsupervised probation, and (2) a fine of $250, respectively. All charges against the remaining defendant were dropped. The applicant was 37 years of age at the time of the offense.

Subsequent to the hearing herein, the Division and applicant agreed that the applicant's conviction in Louisiana, and his underlying conduct, constituted a violation of N.J.S.A. 2C:37-2, promoting gambling, a disorderly person's offense (C-1).

The applicant has committed no other violations of the criminal laws.

In 1981 the Commission issued a temporary license to the applicant to operate junkets from Louisiana to New Jersey. During a 14- to 16-month period the applicant regularly brought groups primarily to Bally's Park Place Casino Hotel (Park Place). The applicant averaged two trips during a six-week period, with an average of 100 patrons per trip. It was established that the applicant's junket activities to New Jersey were conducted without any difficulty and that the applicant was a hard worker and brought in good customers. This testimony was corroborated by the testimony of Ed Sedloff, credit manager at Park Place from June 1981 to January 1983. Following termination of his temporary license, the applicant ceased operations to New Jersey. However, he has continued to conduct junkets to Las Vegas and various casinos in the Caribbean.

The applicant has never been the subject of an Internal Revenue Service audit or administrative disciplinary proceedings in any jurisdiction.

In October 1984 the applicant erroneously received his license from the Commission. Two weeks later he was advised of the error and immediately returned the license to the Commission.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the applicant's misconduct which led to his conviction, the reasons for the applicant's participation in the illegal gambling activities, and the applicant's reputation for good character, honesty and integrity.

The applicant described the circumstances underlying his involvement in the illegal gambling activity. In 1974 in Monroe, Louisiana, it was the mode of the day for people to gather for card games and to make sports bets. The illegal activities emanated from friendly meetings of persons who liked to gamble. More specifically, a package liquor store, restaurant and deserted warehouse (a former nightclub) were owned by Marion Nugent and were located approximately 15 miles southeast of Monroe in a remote area. The deserted warehouse was the site of these "friendly meetings." Eventually, Mr. Nugent scheduled Tuesday and Friday evenings for regular gambling activities. The applicant was a frequent customer, i.e., player. Mr. Nugent asked the applicant to act as a dealer. The applicant agreed and was paid $20 per night for his work on two evenings per week. The applicant never received a percentage of the play. The game had a $100 limit and the average players were $15-20 bettors. On the average, eight to ten players appeared per night and remained two to three hours. On some evenings no patrons appeared. All participants in the game were local residents. The applicant knew that his involvement in the gambling enterprise was unlawful. This activity persisted for approximately one year.

1044 The applicant's role in the activity was corroborated by the testimony of Joe D. Guerriero, an attorney-at-law of the state of Louisiana and a character and fact witness on behalf of the applicant.

The applicant further described the reasons for his involvement in this activity. More specifically, there were few social activities available in Monroe and the applicant participated for excitement. Although he was paid for his efforts, the applicant did not participate for the money.

In addition, the applicant testified that he accepted full responsibility for his misconduct. Also, the applicant did not realize the long-term devastating effect that his misconduct would have upon his life. He acknowledged that his misconduct was foolish and apologized therefore. The applicant was unaware that he is eligible under the laws of Louisiana to have his arrest-conviction record expunged.

Again, the applicant's testimony was corroborated by Mr. Guerriero. More specifically, the witness testified that at the time of his trial in Federal Court, the applicant suffered extreme mental anguish and expressed deep remorse for his misconduct. Further, as a result of his experiences emanating from the charges, the applicant has acknowledged the errors of his past and has changed his thinking and lifestyle in order to prohibit any repetition of such misconduct.

Although the circumstances underlying the applicant's involvement in the illegal gambling activities and the reasons therefore were in dispute, technically, the Division offered no evidence to refute the testimony of the applicant or Mr. Guerriero. The applicant appeared to be credible in every respect, and his testimony was consistent with all other facts present in the case and was fully corroborated by Mr. Guerriero. In essence, I am persuaded to believe the applicant in every respect. Accordingly, the applicant's unrefuted explanations of his misconduct, the reasons therefore and his description of his remedial conduct since the incident are **FOUND AS FACT.**

The applicant called three character witnesses on his behalf. The first was Mr. Guerriero, who attested to the applicant's high standing in his community and the fact that he has led an exemplary life since his conviction.

The applicant's second witness was Mr. Sedloff, who described the excellent manner in which the applicant conducted his business affairs. The witness further testified that he recommended the applicant as a junket representative to his current employer, the Golden Nugget.

The applicant's last witness was Alfred J. Luciani, executive vice president of Golden Nugget of Atlantic City Corporation, the intermediary holding company of the casino licensee. As a result of Mr. Sedloff's recommendation, Mr. Luciani directed the Golden Nugget surveillance department to investigate the applicant. Thereafter, the witness conducted an interview of the applicant, with emphasis upon the incident described herein. Mr. Luciani testified that the applicant created a positive impression and was candid as to his prior misconduct during the interview, which led the witness to encourage the applicant to pursue licensure in New Jersey. Mr. Luciani also testified that the applicant enjoys a good reputation within the casino industry.

The applicant also produced a letter from John Larry Lolley, Judge of the City Court of the City of Monroe, who states that the applicant is a person of high moral, ethical and professional standards and is well regarded in the community in which he lives (J-6).

After consideration of the entire record in this matter, I further **FIND** that the applicant enjoys a high reputation for good character, honesty and integrity within the casino industry and within the community in which he resides.

DISCUSSION OF LAW AND CONCLUSIONS

Under section 102b, Mr. Weinberg was required to meet the standards for licensure of a casino employee. In dispute were whether the applicant's criminal misconduct rendered licensure inimical to the policies of the Act, pursuant to section 86c(4), and whether he possessed the requisite degree of good character, honesty and integrity, pursuant to section 89b(2).

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
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> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

As a result of the stipulation, it has been established that the applicant's conviction is the equivalent of a violation of N.J.S.A. 2C:37-2, promoting gambling, a disorderly person's offense. Accordingly, the offense is not a per se disqualifier, and the significance thereof must be otherwise assessed.

On its face, the applicant's conviction for illegal gambling activity, especially in consideration of the duration of the misconduct, appears to be inimical to the policies of the Act. However, the inimicality of the offense must include consideration of the

ircumstances underlying the incident and the applicant's conduct thereafter. Clearly, the applicant did not participate in the illegal gambling activities for profit, but, rather on a social level. Also, it is important that the applicant accepted full responsibility for his misconduct during the criminal prosecution, i.e., the applicant pled guilty and satisfied the sentence imposed. In addition, it was abundantly evident that the incident has had a deep impact upon the applicant, and that he has altered successfully his attitudes and lifestyle and that he currently has a fear of any future involvement in such misconduct. Also, the applicant has worked hard to develop a most positive business and personal reputation within the industry in which he works and in the community in which he lives. Highly significant is the positive manner in which the applicant conducted junket activities within the casino industry in New Jersey for a period of approximately 14 months during 1981 and 1982. In the final analysis, it is evident that licensure of this applicant would not be inimical to the policies of the Act.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that licensure of the applicant be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-89b(2)

Under section 89b(2) of the Act, Mr. Weinberg was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency

Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

It is abundantly clear that Mr. Weinberg has established his qualifications for licensure. He has explained away any appearance that his licensure would be inimical to the policies of the Act. Further, he has established that he enjoys a high reputation for good character, honesty and integrity within the casino industry and within the community in which he lives and works. Again, highly significant is the applicant's positive experience as a junket representative within the New Jersey gaming industry. An examination of the "whole man" clearly and convincingly establishes that Mr. Weinberg is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corp., at 51, 52.

I **CONCLUDE** that the applicant has established, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Charles M. Weinberg for licensure as a junket representative, sole owner/operator junket enterprise, be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 29, 1985
DATE

Richard L. Voliva Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

April 30 1985
DATE

Paula Weiss
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 02 1985
DATE

Ronald J. Rubenstein
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 United States of America v. Charles Weinberg, et als., United States District Court, Western District of Louisiana - Monroe Division, Criminal Number 74-164, Indictment filed August 9, 1974 (2 pages)

J-2 United States of America v. Charles Weinberg et als., United States District Court, Western District of Louisiana -Monroe Division, Criminal Number 74-164, Ruling on Motions for Judgment of Acquittal, December 31, 1974 (3 pages)

J-3 United States of America v. Charles Weinberg et als., United States District Court, Western District of Louisiana - Monroe Division, Criminal Number 74-164, Continuation of Minutes of Court for Monday, September 16, 1974

J-4A State of Louisiana v. Charles M. Weinberg et als., State of Louisiana - Parish of Richland, Fifth District Court, Numbers 24960, 24961, 24962, Bill of Information filed on April 9, 1975 (3 pages)

J-4B Minutes of Court Proceedings

J-5 Personal History Disclosure Form - 2A, Charles Manley Weinberg, filed on January 3, 1983 (53 pages)

J-6 Casino Control Commission - Vendor Registration Form, Action Travel Service (7 pages)

J-7 Louisiana Revised Statutes 14:90

J-8 N.J.S.A. 2C:37-4 (2 pages)

J-9 N.J.S.A. 2C:37-2 (2 pages)

C-1 Letter to Richard Voliva, Jr., Administrative Law Judge, from Anthony V. D'Elia, Deputy Attorney General, March 8, 1985

WITNESS LIST

FOR THE APPLICANT:

Joe D. Guerriero
Alfred J. Luciani
Edward Sedloff
Charles M. Weinberg

FOR THE RESPONDENT:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-139
REGISTRATION NO. 45711-40
OAL DOCKET NO. CCC 2807-85

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

FINAL ORDER

v.

ELLIOTT L. WINSTON,

Respondent.

A hearing in this matter having been conducted in the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 6, 1985,

IT IS on this 20th day of December 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the casino hotel employee registration of Elliott L. Winston is revoked based upon the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that Elliott L. Winston is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the

Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that copies of this final order be served upon Elliott L. Winston, the Division of Gaming Enforcement, the Office of Administrative Law and all authorized agents of all currently operating casinos within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2807-85

AGENCY DKT. NO. 85-139

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,

Petitioner,

v.

ELLIOTT L. WINSTON,

Respondent.

Robert Bratman, Law Clerk, appearing pursuant to R. 1:21-3(c), for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Elliott L. Winston, respondent, pro se

Record Closed: August 13, 1985 Decided: September 30, 1985

BEFORE **RICHARD L. VOLIVA, JR.,** ALJ:

STATEMENT OF THE CASE

This matter concerns charges filed by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Elliott L. Winston, respondent. The Division alleged that Mr. Winston had violated N.J.S.A. 5:12-91 by reason of the commission of a criminal offense, for which the Division seeks revocation of the respondent's casino employee registration, pursuant to section 129 and 130 of the Casino Control Act (Act). The respondent opposed the action.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 4, 1985. By letter dated April 12, 1985, the Commission advised the respondent of the pending action and of his right to a hearing. By letter filed on April 29, 1985, the respondent requested a hearing. On May 17, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 27, 1985. The matter was heard on August 13, 1985, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Winston is 25 years of age. He last attended the ninth grade at Atlantic City High School. He resides in Pleasantville.

In 1981 the Commission issued a casino hotel employee registration, number 45711-40, to the respondent.

From 1981 through 1984 the respondent was employed by Bally's Park Place Casino Hotel (Park Place) as a steward. The respondent earned a positive employment record (R-1). This employment was terminated by reason of the respondent's involvement in an incident on May 14, 1984, which will be discussed. Future employment is available to the respondent at Park Place, dependent upon the outcome in this proceeding.

On May 14, 1984, the respondent was involved in an incident which led to the charges filed herein. After the respondent had visited a friend, he stopped at Park Place to pick up a check. He then proceeded to a bus stop. As he waited for the bus, the respondent was detained by Atlantic City police officers as a suspect in a robbery, which had occurred purportedly at the World International Hotel (P-2). The respondent denied any involvement in the robbery, which will be discussed further, infra. At the site of his detention, the respondent was identified by the victim of the robbery as the perpetrator

thereof (P-2). The respondent was placed under arrest (P-1). Also, the police conducted a search of the respondent and discovered 22 grams of marijuana in 18 small bags. The respondent was charged with violations of N.J.S.A. 2C:15-1a(1), robbery; N.J.S.A. 24:21-20a(4), of possession of a controlled dangerous substance; and of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute.

The respondent conceded that at the time of his arrest he was a user of marijuana, but denied that he distributed the drug. This will be discussed further, infra.

On June 5, 1984, the respondent was indicted by a state grand jury in Atlantic County for criminal misconduct as set forth above (P-3). On July 12, 1984, the respondent pled not guilty.

On September 26, 1984, and as a result of a plea bargain agreement, the respondent retracted his plea of not guilty and pled guilty to a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute (P-4). The remaining counts of the indictment were dismissed. The respondent was sentenced to probation for a period of three years, 364 days incarceration, credit given for five days served, a $350 fine, and $25 payable to the Violent Crimes Compensation Board. The period of probation terminates in approximately September 1987. He is required to report on a monthly basis, which he has done. The respondent has not paid any portion of the fine to date, by reason of having no money.

The respondent has not been employed since his termination from Park Place. He has applied unsuccessfully for employment at the other casinos.

The respondent has no prior or subsequent criminal record. He testified that he is no longer a user of drugs.

The respondent resides with his mother, who supports him. However, he wants to return to work in order to help support his disabled mother.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were whether the respondent committed the robbery and whether he was a distributor of narcotics.

The respondent denied commission of the robbery. Although the Division established that the respondent was dressed in clothing similar to that worn by the perpetrator of the offense and, while on a street corner in Atlantic City, was identified by the purported victim as the perpetrator, such evidence is not sufficient to establish the commission of the act. In addition, the search by police produced no evidence of the robbery (P-2). In the final analysis, the Division produced insufficient evidence to establish the commission of the crime.

Mr. Winston also denied that he was a distributor of narcotics. However, the respondent's disclaimer must be examined in light of the fact that he was in possession of 22 grams of marijuana in 18 separate bags, and knowingly pled guilty to the charged offense. Under these circumstances I am not persuaded to believe the disclaimer and I am persuaded that the conviction accurately represents the facts.

After consideration of the entire record in this matter, I further **FIND** that:

1. The respondent's denial of the commission of a robbery was corroborated by the search conducted by the police at the time of his arrest and is persuasive.

2. The Division did not produce reliable or sufficient evidence to establish that the respondent had committed a robbery.

3. The respondent did not commit the robbery as charged.

4. The respondent's disclaimer of distribution of drugs was in direct conflict with the credible evidence and was insufficient to overcome that evidence.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that Mr. Winston's conviction constitutes a violation of section 86c(3), that his alleged violation of N.J.S.A. 24:21-20a(4) constitutes a violation of section 86c(4) per section 86g, and that his purported violation of N.J.S.A. 2C:15-1a(1) constitutes a violation of section 86c(1) per section 86g, and, accordingly, establishes that his registration should be revoked.

(A) N.J.S.A. 5:12-86c(3)

Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application" a high misdemeanor under N.J.S.A. 24:21-19 be disqualified from licensure. The Division alleged that the respondent's conviction for a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute, is a disqualifying offense.

The Division established the conviction. Further, the respondent's denial of such misconduct was not persuasive.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent is disqualified from continuing to hold a registration by operation of N.J.S.A. 5:12-86c(3).

(B) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(1)

Section 86g provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutues be disqualified from licensure. The

Division alleged under section 86c(1) that the respondent's conduct constitutes a violation of N.J.S.A. 2C:15-1a(1), robbery, which is a disqualifying offense under section 86c(1).

The Division failed to produce reliable or sufficient evidence that the respondent committed the cited offense. Further, the respondent's denial was corroborated by the search conducted by the police.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 2C:15-1a(1).

(C) N.J.S.A. 5:12-86g and N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1B(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

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The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division alleged that the respondent's conduct constitutes a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance, marijuana, which may be a disqualifying offense under section 86c(4) per section 86g.

The respondent did not deny and his conviction corroborates that he was in possession of marijuana at the time of his arrest. Alone, such misconduct might not be inimical. However, the respondent testified that he had entered Park Place, his employer, as an employee thereof, although not to report for duty, while in possession. Such conduct is very serious in nature. In addition, and for the reasons which will be stated hereafter, the respondent has not established sufficiently his rehabilitation. Accordingly, continued registration would be inimical to the policies of the Act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent is disqualified from continued registration by operation of section 86c(4).

(D) N.J.S.A. 5:12-91d

An registrant faced with the existence of one or more Section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

(1) The nature and duties of the position applied for;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense;

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Mr. Winston is a registrant and was employed as a steward. In his position he had direct and substantial contact with patrons of the casino.

Second, the respondent was convicted of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. Further, the respondent committed a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance. The conviction is an automatic disqualifier under section 86c(3). Further, the possession charge, under the circumstances, is inimical to the policies of the Act. Such misconduct is very serious. The seriousness of the misconduct is enhanced by reason that the respondent entered his employer casino while in possession.

Third, the respondent's exculpatory testimony was not believable. Accordingly, there was no evidence to mitigate the circumstances under which the offenses occurred.

Fourth, the respondent committed the offense on May 14, 1984, approximately 16 months ago.

Fifth, the respondent was approximately 24 years of age at the time of the offense. It was evident that his misconduct was not the result of immaturity.

Sixth, the respondent's misconduct was isolated. In addition, the respondent has not committed any other criminal acts.

Seventh, there were no social conditions which contributed to the offense.

Eighth, the respondent has demonstrated some rehabilitation. Essentially, he has not repeated his misconduct and is no longer a user of drugs. Nevertheless, the respondent has not completed his probation, which has two years remaining, has not made any payments on the fine, and has not been employed since the time of the offense. Although the respondent has sought employment, his search efforts appear to be minimal and were confined to the casino industry, in which employment at this time is an unreasonable expectation.

I am not persuaded that the respondent has met his statutory burden to establish his rehabilitation. Essentially, and in consideration of the recent date of the offense together with the respondent's probationary status, substantially more is required of the respondent than the mere nonrepetition of his misconduct. Rehabilitation requires a positive effort, not simply the absence of a violation of the criminal laws.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(D) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;

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c. any justification or excuse for such conduct by the licensee;

d. the prior history of the particular licensee involved with respect to gaming activity;

e. the correction action taken by the licensee to prevent future misconduct of a like nature from occurring;

Although Mr. Winston could not establish his rehabilitation, there is some reason to believe that he will not return to criminal mischief. Nevertheless, it must be noted that his misconduct was extremely serious in nature as it involved the sale of drugs to other persons, who must be classified as victims of the crime. Further, this misconduct occurred during the time which the respondent held a casino hotel employee registration and was employed in the gaming industry in New Jersey, and the respondent was in possession of the controlled dangerous substance while in a casino facility. This conduct reflects a serious disregard and a lack of appreciation of his attendant responsibilities. The period in which the respondent has been free of misconduct is not sufficient to establish an absence of any risk to the public and to the integrity of gaming operations. Therefore, his registration must be revoked. I so **CONCLUDE.**

DISPOSITION

It is **ORDERED** that the petition of the Division against the casino hotel employee registration of Elliott L. Winston be **GRANTED,** and that the registration be **REVOKED.**

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This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Casino Control Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 30, 1985
DATE

Richard L. Voliva
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

9-30-85
DATE

Toni Dari
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 3 1985
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

P-1 Atlantic City Police Department - Arrest Report, May 14, 1984

P-2 Atlantic City Police Department - Investigation Report, May 14, 1984

P-3 The State of New Jersey v. Elliott L. Winston, Superior Court of New Jersey, Law Division Criminal, Atlantic County, No. 0851-6-84-C, Indictment, filed June 5, 1984 (4 pages)

P-4 The State of New Jersey v. Elliott L. Winston, New Jersey Superior Court, Atlantic County, Law Division - Criminal, Judgment of Conviction, November 2, 1984 (5 pages)

R-1 Letter from Sam Ross, July 25, 1985

WITNESS LIST

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

Elliott L. Winston

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EA-6
APPLICATION NO. 44412-21
OAL DOCKET NO. CCC 1065-85

APPLICATION OF HAROLD C. WOODWARD FOR A CASINO EMPLOYEE LICENSE (JUNKET REPRESENTATIVE/ SOLE OWNER/OPERATOR JUNKET ENTERPRISE)

FINAL ORDER

A hearing having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of August 21, 1985,

IT IS on this 28th day of AUGUST 1985, ORDERED that the initial decision is affirmed; and

IT IS FURTHER ORDERED that the application of Harold C. Woodward is granted substantially for the reasons stated in the initial decision, which is incorporated here by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon Harold C. Woodward, the Division of Gaming

Enforcement and the OAL within ten (10) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1065-85
AGENCY DKT. NO. 85-EA-6

HAROLD C. WOODWARD,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Harold C. Woodward, petitioner, pro se

Anthony V. D'Elia, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: May 20, 1985 Decided: July 8, 1985

BEFORE **JOSEPH F. FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Harold C. Woodward to the Casino Control Commission for licensure as a casino employee, permitting him to act as a junket representative, sole owner/operator. The Division of Gaming Enforcement has objected to the licensure of the petitioner. The issue to be resolved in this matter is as follows:

> Whether the petitioner, with specific reference to his relationship with tour companies and individuals named in the Division's letter of objection, dated December 3, 1984, and with specific reference to his alleged operation of junket activities prior to his receiving a

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temporary license, has established by clear and convincing evidence his good character, honesty and integrity, within the meaning of sections 89d(2), 90b and 102b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter to the Casino Control Commission, dated December 3, 1984. On January 21, 1985, the petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law on February 26, 1985, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held in this matter on April 10, 1985, and the hearing was held on May 20, 1985.

FINDINGS OF FACT

The petitioner is a 43-year-old resident of Bayonne, New Jersey. On March 23, 1983, the Casino Control Commission awarded temporary licensure to the petitioner as a junket representative. This temporary license was renewed for a period of six months in March 1984, and it expired on September 23, 1984. The Casino Control Commission awarded the petitioner temporary licensure as a sole owner/operator junket enterprise on May 16, 1984.

The petitioner has been employed as a truck driver for a number of years. In 1982, the petitioner began part-time employment with Inner Circle Qonexions, a tour bus company in Secaucus, New Jersey. This employment included the responsibility for driving junket tour buses to Atlantic City casinos on weekends. According to the testimony of the petitioner, he provided outstanding service to these customers and many of the patrons would ask the bus company to have the petitioner assigned to their trips. The petitioner also stated that many customers asked the petitioner if he would personally arrange trips and the petitioner became interested in getting started as a junket representative. According to the petitioner, he asked numerous questions of the tour people that he met and they all mentioned to him that he would need a junket representative license.

On some of the trips that the petitioner drove to Atlantic City, he met one Alvin Skloff, who would greet patrons arriving at Caesar's Boardwalk Regency Hotel Casino. The petitioner mentioned to Mr. Skloff that there were people who wanted petitioner to arrange junkets to Atlantic City and Mr. Skloff referred the petitioner to Atlantic Tour and Transit (hereinafter Atlantic Tour), and Mr. Skloff told the petitioner that Atlantic Tour would do business with him, but that the petitioner would have to apply for a license.

In March 1983, the petitioner obtained his temporary license as a junket representative. He contacted Atlantic Tour and arranged to bring junket trips to Atlantic City casinos at time slots which would be arranged and verified by Atlantic Tour. From May 1983 until March 1984, the petitioner acted as a junket representative on approximately 20 trips which were arranged through Atlantic Tour. According to the petitioner, he would receive either cash or a check from the junket patrons and with this money, he would arrange for the bus and for food. The money remaining was his commission, and this is how he was compensated during his business relationship with Atlantic Tour.

It was the testimony of the petitioner that Atlantic Tour had business problems, the nature of which was unknown to the petitioner, and that his name was given to other tour companies through which he could operate junkets. Thus, the petitioner operated junket tours through VIP Tours and through Atlantic City Sky Rollers (hereinafter ACSR) in 1983 and 1984. According to the petitioner, he dealt directly with Jeffrey Sands of ACSR, and he was required to pay Mr. Sands $200-250 per trip for the junket time slot at a casino. Mr. Sands caused the petitioner a great deal of difficulty when he began canceling trips which had already been arranged by the petitioner.

The petitioner testified that he was aggravated by the cancellations of his junkets and he had grown tired of the run-around which he felt he had experienced with various tour companies. He felt he could improve the situation by dealing directly with the casinos. The petitioner spoke with Leslie Cooperman at Caesar's and was told that she would not talk to him about junkets until he had a sole owner/operator license. According to the petitioner, that was when he learned for the first time that he would need such a license. He then applied for the sole owner/operator license, and he obtained his temporary license on May 16, 1984.

It is undisputed that the principals within Atlantic Tour, VIP Tours and ACSR are the subjects of an 89-count indictment handed down by a New Jersey State Grand Jury on September 6, 1984. This indictment resulted from an inquiry conducted by the New Jersey Division of Criminal Justice in connection with an investigation of Atlantic City bus operations. It was the sincere and candid testimony of the petitioner that he had no idea that the tour companies and their principals were involved in any kind of wrongdoing until he was investigated and interviewed by an agent of the Division of Gaming Enforcement. He did not fully understand the Division's concerns until he received its letter of objection to his licensure, dated December 3, 1984.

It was the credible testimony of the petitioner that he operated his business honestly, to the best of his knowledge. He felt he had worked for Atlantic Tour and he had so informed the Division of Gaming Enforcement agent who had interviewed him. To corroborate his testimony that he felt he was an employee of Atlantic Tour, the petitioner offered a letter to him from Joseph Millman, President of Atlantic Tour, which identified for the petitioner the Atlantic Tour personnel to whom requests for junkets should be made and with whom any financial dealings should be arranged (Exhibit P-5).

Joseph Pepe testified at the hearing that he has known the petitioner for 22 years and that the petitioner is a good family man and hard worker with a good reputation. Thomas L. Bowe testified that he has known the petitioner for eight years and that the petitioner is a church-minded family man who can be trusted. Letters from other individuals, including the petitioner's pastor, which attest to the petitioner's integrity and reputation for honesty, were admitted into evidence as Exhibits P-1, P-2 and P-3.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to Sections 89b(2), 90b and 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license which would permit him to act as a junket representative must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Pursuant to N.J.A.C. 19:49-2.1(c)(1) and (2), a person acting as a junket representative must be licensed as a

junket representative and must be employed by either a licensed casino or a licensed junket enterprise, or must be personally licensed as a sole owner/operator junket enterprise.

The petitioner did not receive his temporary licensure as a sole owner/operator junket enterprise until May 1984. He began operation of junket activities in March 1983, after receiving his temporary licensure as a junket representative. However, it is undisputed that between March 1983 and May 1984, the petitioner was not an employee of a licensed casino. The petitioner testified credibly that he believed he was an employee of a licensed junket enterprise prior to his receiving a temporary sole owner/operator junket enterprise license. Inasmuch as the petitioner was not actually an employee of a licensed junket enterprise, his operation of junket activities between March 1983 and March 1984 violated the provisions of N.J.A.C. 19:49-2.1(c)(1) and (2).

The petitioner's operation of junket activities without proper licensure calls into question his good character, honesty and integrity. However, having accepted the petitioner's credible explanation that he believed himself to be an employee of a licensed junket enterprise, and having considered the unrefuted evidence concerning the petitioner's reputation for good character, honesty and integrity, I **CONCLUDE** that the petitioner has sustained his burden of establishing, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Casino Control Act, as incorporated in Section 102 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Harold C. Woodward for a casino employee license, permitting him to act as a junket representative, sole owner/operator, be **GRANTED.**

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

7-8-85
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 10, 1985
DATE

Bernadette V. Finger
CASINO CONTROL COMMISSION

Mailed to Parties:

July 12, 1985
DATE

Ronald D. Parker/k.s.
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Petitioner:

P-1 Letter, dated April 22, 1985
P-2 Letter, dated April 19, 1985
P-3 Letter, dated April 22, 1985
P-4 Envelope
P-5 Letter, dated May 19, 1983

For the Respondent:

R-1 Personal History Disclosure Form
R-2 Position Addition Request, dated April 2, 1984
R-3 Not in evidence

WITNESSES

For the Petitioner:

Joseph Pepe
Thomas Bowe
Harold C. Woodward

For the Respondent:

None